U. S. Sup Ct Appeals U. S. 79

9 Otto 372
Oct. 5. 1878

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1098.

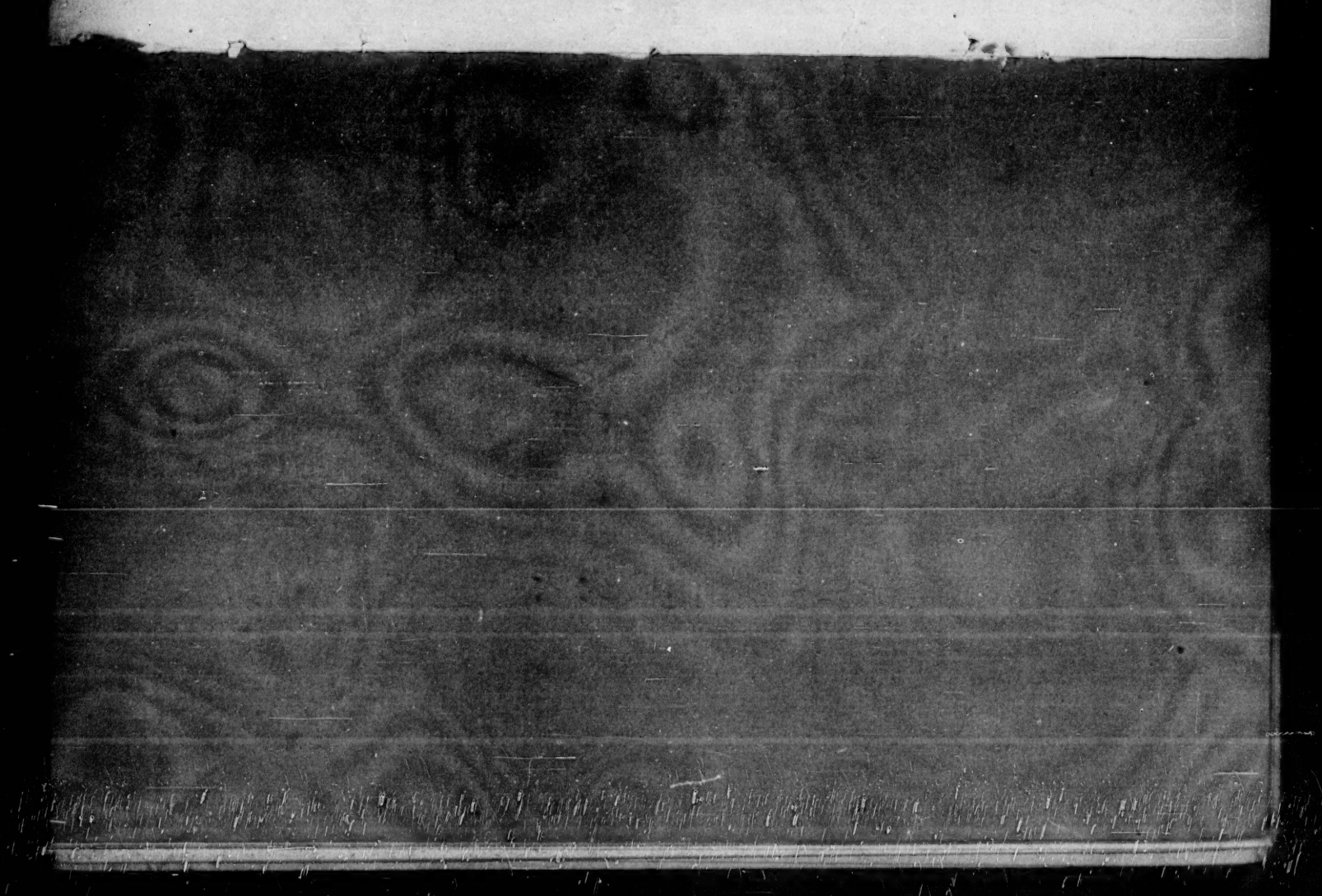
THE UNITED STATES, APPELLANT,

vs.

JOSIAH WINCHESTER, EXECUTOR OF JOHN C. JENKINS, DECEASED.

APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 13, 1879.



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1 UNITED STATES, APPELLANT,
vs.
JOSIAH WINCHESTER, EX. OF JOHN C. JENKINS, dec. } No. 1098.

It is stipulated by the counsel in the above case that the petition of the appellee in case No. 3552, in the Court of Claims, shall be substituted for the petition in the record. The petition in the record having been taken from another case by mistake, the true petition in the case shall be certified by the clerk of the Court of Claims as the petition.

JOS. S. FOWLER,
Counsel for Appellee.
EDWIN B. SMITH,
Ass't Att'y Gen'l, for the Appellant.

2 *Petition.—Filed Aug.* 19, 1868.

In the United States Court of Claims.

JOSIAH WINCHESTER, EXECUTOR OF ESTATE of John C. Jenkins, dec'd,
vs.
THE UNITED STATES. } No. 3552.

The petition of Josiah Winchester respectfully showeth that he is the sole surviving executor of the last will and testament of John C. Jenkins, deceased, late a resident of Adams County, State of Mississippi, and also guardian of the minor children of said John C. Jenkins, deceased, as will appear by certified copies of probate of will and letters of guardianship herewith appended, and marked Exhibits A and B; that in the month of February, 1863, there was in store on the plantation belonging to the estate of the said John C. Jenkins, in the county of Wilkinson, State of Mississippi, and known as the "River Place," being on the east bank of the Mississippi, about seven miles above the mouth of Red River, a quantity of cotton, in bales, belonging to said estate; that, petitioner being temporarily absent from the plantation on a visit to his family in Natchez, he left said plantation in charge of Z. D. Cresnell, overseer and manager thereof, who is now deceased; that on petitioner's return he was informed that one hundred and ninety-seven (197) bales of said cotton had been taken from said plantation under the following circumstances:

That about 12 o'clock, noon, of the 18th February, 1863, the steamer Era No. 5, a boat captured by the United States forces in Red
3 River, stopped at the landing of said plantation, and the officers thereof inquired for cotton there or in the neighborhood, and being informed by Mr. Cresnell that there were bales of cotton on said plantation, Col. Charles Rivers Elliott, who was in command of said boat, directed him, Mr. Cresnell, to have the same hauled out to the boat; that he, the said Cresnell, then protested against the taking of said cotton on the ground that the same belonged to minor children, who were in no wise engaged in the war, and their guardians were reported to be good Union men; that Col. Elliott then stated that he had been in command of United States steamer Queen of the West, which had recently run the batteries at Vicksburg and made a trip to the mouth of Red River; that with said boat he had entered the mouth of Red River, and there captured the Era No. 5, and on learning from the offi-

cers of said captured boat that there was a battery planted at a point, Fort de Russey, on Red River, he had proceeded up the river with the Queen of the West for the purpose of viewing that fortification; that he had suddenly run under the guns of the fortifications, and from a shot received from the battery the Queen of the West became disabled, and that he and his officers and men had come off on the steamer Era No. 5, and he was then in search of cotton to protect said boat on her way to Vicksburg, and that on his arrival at Vicksburg the cotton would be turned over to the United States authorities, and the heirs or their guardian could get the cotton or its proceeds from the United States; that after said cotton had been taken and put on board said boat, Col. Elliott directed one of his officers to make a receipt for the cotton taken from said plantation, which was done, and which receipt is in the words and figures following, to wit:

U. S. STEAMER ERA NO. 5,
Feb. 18, 1862, 1863.

Wilkinson Co., Miss.—Plantation J. C. Jenkins' heirs.
4 Seized by the order of Col. Charles Rivers Ellet, com'd'g Miss. River ram-fleet, one hundred and sixty-eight bales of cotton, for the use of the United States Government, belonging to the heirs of J. C. Jenkins, deceased.

ASGILE CONNER,
Capt. Co. K, 18th Ill's Vols.

Petitioner represents that there is a discrepancy between the receipt and the facts as to the number of bales actually taken, as well as the date of taking, which was explained to petitioner by Mr. Cresnell, as follows: That the cotton was taken aboard in a great hurry, and it was quite dark before the last of the cotton was got on board, and Col. Ellet had expressed his desire to get off from the landing before dark; that no account was kept of the bales as they were rolled on board, and when Col. Ellet directed the receipt to be given there was no time to make an accurate count of the number of bales on board, and they could only approximate to the number by taking the number of tiers around the boiler, and the number of bales in each tier. Mr. Cresnell stated there were some bales placed around the pilot-house which were overlooked at the time and not counted, and therefore were omitted in the receipt; that after the boat left he ascertained from a count of the bales of cotton left in the store-room on the plantation, that one hundred and ninety-seven bales had actually been taken instead of one hundred and sixty-eight, as stated in the receipt.

Petitioner further states that he is informed and believes that the said steamer, Era No. 5, arrived safely at Vicksburg with said cotton, and that the same was then and there turned over to the proper United States authorities, and he presumes that the same has been sold and the proceeds thereof paid into the United States Treasury.

Petitioner further states that Z. D. Cresnell, the overseer herein referred to, was some time after the taking of the said cotton conscripted by the conscripting officers of the so-called Confederate States Gov-
5 ernment, and ordered to report to Bragg's army in Tennessee; that he, the said Cresnell, left said plantation about the 25th March, 1863, for the purpose of reporting as aforesaid, but with the expectation of being discharged on account of inability, when he was to return and resume his duties as overseer; that petitioner was afterwards informed he did so report and was discharged, but that he was taken sick a few days afterwards and died in the State of Tennessee.

Petitioner further states that John C. Jenkins and his wife both died of yellow fever in the summer of 1855, leaving four minor children, to wit, Alice Jenkins, Mary D. Jenkins, John F. Jenkins, and William D. Jenkins; that two of said children are still minors, to wit, John F. Jenkins and William D. Jenkins; that Miss Alice Jenkins is residing in said county of Adams, Mississippi, and Mary D. Jenkins intermarried in 1864 with Louis M. Johnston, then 1st lieutenant battery I, Pennsylvania light artillery (independent), serving in Department of Pennsylvania and Middle Department of Washington, and is now residing in New York; that letters testamentary and of guardianship were duly granted to this petitioner jointly with one Samuel L. Greer, who departed this life in 1864, leaving petitioner sole executor and guardian as aforesaid.

Petitioner further states that he is a citizen of the United States, that he has at all times borne true allegiance to the Government of the United States, and that he has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the said government.

J. WINCHESTER,
Executor of Estate of J. C. Jenkins.

R. J. ATKINSON,
BARTLEY & BURNET,
C. CUSHING,
Counsel for Petitioner.

6 STATE OF MISSISSIPPI,
Adams County, ss:

Josiah Winchester, being duly sworn, says that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made except as in said petition stated; that said claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets, and that he believes the facts stated in said petition are true.

J. WINCHESTER.

Sworn to and subscribed before me and given under my hand and seal of office, at the city of Natchez, this 27th day of December, A. D. 1867.

[SEAL.] HENRY C. EUSTIS,
Clerk of Probate Court.

Address of claimant and counsel: Josiah Winchester, Natchez, Mississippi; Bartley & Burnet, Cincinnati, Ohio; R. J. Atkinson, Washington, D. C.; C. Cushing, Washington, D. C.

EXHIBIT A.

STATE OF MISSISSIPPI,
Adams County:

By the probate court of said county.

Whereas John C. Jenkins made his last will and testament, and at a probate court held in the aforesaid county on the fourth Monday in October, A. D. 1865, the said will was proven and admitted of record in this court, wherein were appointed Josiah Winchester and Samuel L. Greer for the execution thereof; and the said Josiah Winchester and Samuel L. Greer having complied with the provisions of the statute in such case made and provided: Therefore, to the intent that the said

will may be well and truly performed, we do give, grant, and
7 commit unto the said executors the administration of the goods and chattels, rights and credits, whatsoever, belonging to or concerning said testator's estate, with full power to dispose of all and singular the said goods and chattels, rights and credits, according to the tenor of the said will and the true intent and meaning of the said testator, within the time prescribed by law, and to render a true account of their administration whenever thereunto legally required.

Witness Reuben Bullock, esquire, judge of probate of said county, this twenty-third day of October, in the year one thousand eight hundred and fifty-five.

[L. S.] RICHARD A. INGE, *Clerk.*

THE STATE OF MISSISSIPPI,
Adams County, ss:

I, Robert G. Wood, clerk of the probate court of said county, do hereby certify that the foregoing page contains a true and perfect copy of the letters testamentary granted to Josiah Winchester and Samuel L. Greer on the estate of John C. Jenkins, deceased, as the same remains on record in my office.

In testimony whereof I have hereunto set my hand and seal of said court, at Natchez, the 30th day of May, A. D. 1866.

[SEAL.] RO. G. WOOD, *Clerk.*

THE STATE OF MISSISSIPPI,
Adams County, ss:

I, Reuben Bullock, judge of the probate court (sole and presiding) of said county and State, do hereby certify that Robert G. Wood, whose genuine signature appears to the foregoing certificate and attestation, is, and was at the date thereof, clerk of said probate court, duly elected, qualified, and commissioned; that his said certificate and attestation are in due form of law, and that all of his acts in the premises are and ought to be entitled to full faith and credit in judicature and thereout.

Given under my hand and seal this 30th day of May, 1866.

[SEAL.] R. BULLOCK, *Judge.*

8 In the Court of Claims.

JOSIAH WINCHESTER, EXECUTOR OF JOHN C. Jenkins, deceased, *vs.* THE UNITED STATES.	No. 3552.

I, John Randolph, assistant clerk of the Court of Claims, certify that the foregoing is a true copy of the original petition filed in the aforesaid cause August 19, 1868, and that it should take the place of the petition certified to the Supreme Court of the United States (by a clerical error), in the record on appeal in this cause, which record was certified the 13th day of March, A. D. 1879.

In testimony whereof I hereunto set my hand and affix the seal of said Court of Claims this third day of April, A. D. 1879.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk C't of Claims.

(Indorsed:) Supreme Court U. S. 1878, Octo. term. No. 1098. The United States v. Josiah Winchester, ex'r of John C. Jenkins, dec'd. Stipulation of counsel to correct record, & certified copy of petition of claimant. Filed 3 April, 1879.

1 In the United States Court of Claims.

JOSIAH WINCHESTER, EXECUTOR OF JOHN C. JENKINS, deceased,
vs.
THE UNITED STATES. } No. 3552.

I. *Petition.—Filed August* 19, 1868.

To the honorable the judges of the Court of Claims:

The petition of Josiah Winchester, executor of John C. Jenkins, late of the State of Mississippi, deceased, respectfully represents:

That he is the executor of the estate of the said John C. Jenkins, deceased, and guardian as well of the minor children of said deceased.

And as such executor on or about the first day of November, A. D. 1864, he had and held two hundred and thirty-one bales of cotton belonging to said estate and raised upon the plantation which belonged to his said testator in his lifetime, situated in the county of Wilkinson, in the State of Mississippi.

And that on or about the 5th day of December, A. D. 1864, your said petitioner procured permission from the proper Treasury agent and from Major-General E. R. S. Canby, commanding the military Department of the Gulf, to ship said cotton to New Orleans.

And your petitioner paid to one J. F. Richardson, a special
2 agent of the United States Treasury at Natchez, Mississippi, all the fees, costs, charges, and taxes due to the United States for and on account of said permit, or the shipment of said cotton.

And your petitioner further shows that, in pursuance of his permits and authority aforesaid, he caused the said two hundred and thirty-one bales of cotton aforesaid to be shipped to the city of New Orleans, consigned to his agent and factor, J. Norman Jackson, a commission merchant, resident and doing business at the said city of New Orleans.

And while the same so remained in the care and custody of the said J. Norman Jackson, the same cotton was seized by one O. N. Cutler, a purchasing agent for the United States Treasury Department at New Orleans, and the said J. Norman Jackson was then and there compelled to sell the same to the said agent for and on behalf of the United States at and for the sum of nineteen thousand two hundred and twenty-six dollars and seventy-six cents, and from which was deducted by the said Cutler, for and on behalf of the United States, the sum of six thousand one hundred and twenty-nine dollars and nine cents for and on account of internal-revenue tax, permit fee, storage, drayage, weighing, and classifying said cotton; and the said Cutler also caused to be then and there deducted off and from the price of the said cotton the one-fourth or twenty-five per centum thereof for the use and on behalf of the United States, amounting to the sum of four thousand eight hundred and six dollars and sixty-nine cents ($4,806.69).

And your petitioner shows that the said cotton, so illegally seized by said Cutler, was afterwards shipped by him to New York for and on account of the United States, and was then and there sold by the agents and factors of the United States for the sum of forty thousand dollars, and the money arising therefrom was afterwards, to wit, on the
3 30th day of March, A. D. 1868, paid over to and covered into the Treasury of the United States, where the same now remains.

And the said petitioner claims to have and recover of and from the United States the sum of twenty thousand three hundred and thirty-

three dollars and twenty-four cents, being the difference between the sum for which said cotton was sold by the United States and the sum paid to your petitioner by the said Cutler, under the illegal seizure and compulsory sale aforesaid.

He claims also the sum of six thousand one hundred and twenty-nine dollars and ninety-nine cents for internal-revenue taxes, and for permit fee, and various charges illegally made and extorted from the said petitioner by the said Cutler on the 26th day of April, 1865, and afterwards by him paid over to the United States, and the same paid over to and covered into the Treasury of the United States on the 30th day of March, A. D. 1868, making in all the sum of twenty-six thousand four hundred and sixty-three dollars and twenty-three cents.

Your petitioner further shows that the said John C. Jenkins, in his lifetime, and this petitioner, have at all times borne true faith and allegiance to the United States, and have not, or either of them, at any time given any aid or comfort or encouragement to rebellion against the same, or to persons engaged therein.

And for the sum aforesaid, or such part thereof as the court shall deem just and right, he prays judgment may be rendered in his favor.

And he prays, &c.

JOSIAH WINCHESTER.

STATE OF MISSISSIPPI,
Warren County, ss:

Josiah Winchester, executor of John C. Jenkins, deceased, who signed the foregoing petition, personally appeared before me, and made
4 oath in due form of law that no assignment or transfer of the claim therein stated, or of any part thereof or any interest therein, has been made. And that he is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that the facts stated in said petition are true.

JOSIAH WINCHESTER.

Sworn and subscribed before me this 27th day of June, A. D. 1871.

JACOB ADLER,
J. P. and N. P.

Claimant, Josiah Winchester, Natchez, Mississippi.

BARTLEY & CASEY,
Attorneys, Washington, D. C.

5 II. *Amended petition.—Filed July* 20, 1871.

And the said claimant, by leave of the court first had and obtained, by way of amendment to his petition in this case, further avers and represents that his testator, John C. Jenkins, did at all times, during his life, bear true allegiance to the Government of the United States, and that he has not and did not in any way voluntarily aid, abet, or give encouragement to the rebellion against said government.

(Signed) C. CUSHING,
W. W. BOYCE,
Of Counsel.

B. D. Whitney, of Washington City, attorney in fact for said Josiah Winchester, executor, being duly sworn, says that the facts set forth in the above-amended petition are true according to the best of his knowledge, information, and belief.

BENJ. D. WHITNEY.

Subscribed and sworn to before me, the undersigned, this 20th day of September, 1869.

[L. S.]

N. CALLAN,
Notary Public.

6 III. *Traverse.—Filed Dec.* 23, 1878.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

THOMAS SIMONS,
Assistant Attorney-General.

7 IV. *Findings of fact and conclusion of law.*

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I. The claimant is sole surviving executor of the will of John C. Jenkins, late of Adams County, in the State of Mississippi, duly approved and allowed in the probate court of said county, upon which letters testamentary were issued October 23, 1855, the said Jenkins having died before that date, leaving a plantation owned by him in the county of Wilkinson, in said State, with directions in said will for the cultivation of the same by the representatives of his estate for the benefit of his children.

II. On the 18th day of February, 1863, there was on said plantation, belonging to the estate of said deceased, and raised thereon, according to the provisions of the will, a quantity of cotton, of which 168 bales were captured by the naval forces of the United States under command of Admiral Porter, and the following receipt given therefor:

U. S. ST'R ERA NO. 5, WILKINSON CO., MISS.,
PLANTATION J. C. JENKINS' HEIRS,
Feb. 18, 1863.

Seized by the order of Col. Charles Rivers Ellet, comd'g Miss. River ram fleet, one hundred and sixty-eight bales of cotton, for the use of the United States Government, belonging to the heirs of the estate of J. C. Jenkins, dec'd.

ASGILL CONNER,
Capt. Co. K, 18th Ill's Volunteers.

III. Said cotton, so captured and seized, was taken on board of a government steamer, the New Era No. 5, to Johnson's Landing, where it was unladen and hauled to Milliken's Bend, on the Mississippi River, and there, with other cotton, making a lot of 258 bales and one bag, was shipped on board of the steamer Rowena, about the last of March or first of April, 1863, and sent to Cairo, Ill., by order of Admiral Porter, to be turned over to the marshal of that district, as set forth in Captain Pennock's information. The cotton arrived at Cairo April 7, was received there April 8, by Capt. A. M. Pennock of the Navy, commandant of the naval station at that place, acting under Admiral Porter, and by said Pennock turned over to the United States marshal April 9, 1863.

IV. Thereafter such proceedings were had respecting said cot-
8 ton as appear by the following duly certified copy of the records of the court therein mentioned:

In the district court of the United States for the southern district of Illinois.

THE UNITED STATES, ON RELATION OF A. M. Pennock, as informer,
v.
TWO HUNDRED AND FIFTY-EIGHT BALES AND one bag of cotton.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

Pleas in the district court of the United States of America for the southern district of Illinois, begun and held in the city of Springfield, in said district, before the honorable Samuel H. Treat, district judge, Wednesday, the fourth day of November, in the year of our Lord one thousand eight hundred and sixty-three, and of the Independence of the United States the eighty-eighth.

THE UNITED STATES, EX REL. A. M. PENNOCK,
v.
TWO HUNDRED AND FIFTY-EIGHT BALES AND one bag cotton.
} Libel in forfeiture.

Be it remembered that heretofore, to wit, on the seventeenth day of April, in the year of our Lord one thousand eight hundred and sixty-three, came Lawrence Weldon, attorney of the United States for the southern district of Illinois, and filed in the office of the clerk of the district court of the United States for said district the information of A. M. Pennock, fleet-captain, &c., and also a libel in behalf of the United States and said A. M. Pennock against two hundred and fifty-eight bales and one bag of cotton, which said information and libel are in the words and figures following, to wit:

Information.

To L. WELDON, *U. S. att'y for the southern district of Illinois:*

SIR: I hereby file information against the following property, to wit, (258) two hundred and fifty-eight bales and (1) one bag cotton, (130) one hundred and thirty bales of which was seized by order of Admiral Porter from Mrs. Twitty, at Wilson Mitchell's Landing, Miss'ippi River, by the U. S. gunboat Gen'l Bragg, and the balance was sent from the Yazoo River by Admiral Porter as prize-cotton, to be turned over to the U. S. marshal and sold for the use of the Government of the United States, the whole being seized as being the property of rebels.

A. M. PENNOCK,
Fleet Capt. & Comm'd't of Station.

U. S. NAVAL STATION,
Cairo, Ills., April 9th, 1863.

Filed April 17, 1863.

Libel.

UNITED STATES OF AMERICA,
Southern District of Illinois:

District court.

To the Hon. SAMUEL H. TREAT, *judge of said court:*

The libel of information of Lawrence Weldon, att'y of the U. S. of said district, who, being here in his own proper person, prosecutes in the name and behalf of the United States as well as A. M. Pennock, would give your honor to understand and be informed that he, the said A. M. Pennock, seized the following property, to wit: Two hundred and fifty-eight (258) bales and one bag cotton; said seizure was made on or about the day of , A. D. , by order of Admiral Porter, at Wilson Mitchell's Landing on the Missi'ppi River, by the U. S. gunboat Gen'l Bragg, the said Missi'ppi River being a public water of the United States, navigable to the sea by vessels of ten or more tons burden.

Said seizure was made for the reasons following, to wit:

That the said cotton was purchased in a district or part of the United States which before said purchase had been declared to be under insurrectionary control by the President of the United States, and was proceeding from said district or part of the United States to another
9 district or part of the United States which had not been so declared to be under insurrectionary control, contrary to the act of July 13th, 1861, and the proclamation of the President of August 16th, 1861.

That all and singular the premises are true and within the admiralty jurisdiction of this court; that by reason of said premises the said two hundred and fifty-eight bales and one bag cotton became and are forfeited to the United States.

Wherefore the said attorney, on behalf of the United States, prays the usual process and monition, according to law and the jurisdiction of this honorable court in such case, may issue against said two hundred and fifty-eight bales and one bag cotton, and that the same may be condemned and sold to answer the prayer of this information, and for such other order as may be required.

LAWRENCE WELDON,
Dis't Attorney.

The leave of court being first had, the said libellant further charges that the said property belongs to a person now in armed rebellion against the Government of the United States.

L. WELDON, *Dis't Att'y.*

Filed April 17, 1863.

Monition.

Whereupon a writ of monition was issued against the said two hundred and fifty-eight bales and one bag cotton, directed to the marshal of the southern district of Illinois to execute, which said writ, together with the return of the marshal thereto and the certificates of publication of the libel and seizure of said cotton, are in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

The United States of America to the marshal of the southern district of Illinois, greeting:

Whereas a libel has been filed in the district court of the United States in and for the southern district of Illinois, on the 17th day of April, in the year of our Lord one thousand eight hundred and sixty-three, by Lawrence Wildon, att'y of the United States, and A. M. Pennock, against two hundred and fifty-eight bales and one bag of cotton, for reasons and causes in said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons having or pretending to have any right, title, or interest therein may be cited to appear and answer all and singular the matters in said libel articulately propounded, and that this court would be pleased to pronounce for the sum of the damages alleged in said libel, besides costs of suit:

You are therefore commanded to attach the said 258 bales and one bag of cotton, and to detain the same in your custody until the further order of this court respecting the same, and to give notice by publication in the Illinois State Register for fourteen days previous to the day of trial, and by notice posted up in the most public manner, for the space of fourteen days, at or near the place of trial, of such seizure and libel, to all persons claiming the said 258 bales and one bag of cotton, or knowing or having anything to say why this court should not pronounce against the same, according to the prayer of the said libel, and that they be and appear before the said court, to be held in and for the southern district of Illinois, at the United States court-room, in the city of Springfield, in said district, on the first Monday in May next, if that be a day of jurisdiction; if not, then on the first day of jurisdiction thereafter, at ten o'clock in the forenoon of that day, then and there to interpose a claim of the same, and to make their allegations in that behalf.

And what you shall have done in the premises do you then and there make return, together with this writ.

Witness the honorable Samuel H. Treat, judge of said court, this 17th day of April, in the year of our Lord one thousand eight hundred and sixty-three, and of our Independence the eighty-seventh year.

[SEAL.] S. A. CORNEAU, *Clerk.*

(Endorsed:)

Return.

By virtue of this writ I have this day attached the within-described cotton, and made proclamation of the same, on this 17th day of April, 1863. And I do further request of the honorable court that, as the said cotton is perishable and liable to destruction, that order of sale be made for the disposition of said property pending the suit.

D. L. PHILLIPS,
U. S. Marshal.

(Endorsed:) Filed this 1st day of June, A. D. 1863.

10 *Notice.*

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

Whereas on the 17th day of April, A. D. 1863, Lawrence Weldon,

United States district attorney, filed a libel in the district court of the United States for the southern district of Illinois against two hundred and fifty-eight bales and one bag of cotton, on information of A. M. Pennock, in a cause of condemnation and forfeiture;

And whereas, by virtue of process in due form of law to me directed, returnable on the first Monday in May next, I have seized upon and taken the said two hundred and fifty-eight bales and one bag of cotton, and have the same in my custody:

Notice is hereby given that a district court of the United States will be held at the United States court-room in the city of Springfield, on the first Monday of May next, for the trial of said premises, and the owner or owners, and all persons who have or claim any interest, are hereby cited to be and appear at the time and place aforesaid, to show cause, if any they have, why a final decree should not pass as prayed.

D. L. PHILLIPS,
U. S. Marshal.

SPRINGFIELD, ILL., *April 17th*, 1863.

Publisher's certificate.

The undersigned, publisher of the Illinois State Register, a newspaper published at Springfield, Illinois, does hereby certify that the annexed notice was published in said paper for fourteen days successively, the first publication thereof having been made on the 18th day of April, A. D. 1863, and the last on the 4th day of May, A. D. 1863.

C. H. LANPHIER,
Publisher Illinois State Register.

And afterwards, to wit, on the same day and year aforesaid, at a special term of said court, the following proceedings were had in said court and entered of record, to wit:

THE UNITED STATES, ON THE RELATION OF A. M. Pennock, as informer,
vs.
TWO HUNDRED AND FIFTY-EIGHT BALES AND one bag cotton.
} In admiralty.

This day came the United States by the district attorney, and the marshal having made return to the monition "that he has seized the said two hundred and fifty-eight bales and one bag cotton, and that it will be for the interest of all concerned that said property should at once be sold:"

It is therefore ordered by the court, on the motion of the district attorney, that the said property be sold at public vendue for cash, and that the proceeds be brought into court to abide the result of this proceeding.

It is further ordered that the marshal give reasonable notice of such sale in the newspaper designated by the court, and also in a newspaper published in each of the cities of Chicago and Saint Louis.

On motion of the dis't att'y, it is further ordered that he have leave to amend the libel, which is accordingly done.

And afterwards, to wit, on the twentieth day of April, in the year aforesaid, a writ of venditioni exponas was issued against said two hundred and fifty-eight bales and one bag of cotton, directed to the marshal of the southern district of Illinois to execute, which said writ, together with the return of the marshal thereto, is in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

The United States of America to the marshal of the southern district of Illinois, greeting:

Whereas a libel was filed in the district court of the United States for the southern district of Illinois on the 17th day of April, in the year of our Lord one thousand eight hundred and sixty-three, by Lawrence Wildon, attorney of the United States, in the name and behalf of the United States, as of A. M. Pennock, against two hundred and fifty-eight bales and one bag of cotton, praying that the same may be condemned and sold for the causes in said libel alleged;

And whereas the said 258 bales and one bag of cotton has been attached by process issued out of the said district court in pursuance of the said libel, and is now in custody by virtue thereof; and such pro-
11 ceedings have been thereupon had that by the order pendente lite of the said court in this cause, made and pronounced on the 17th day of April, in the year of our Lord one thousand eight hundred and sixty-three, the said 258 bales and one bag of cotton was ordered to be sold by you, the said marshal, and after giving 20 days' notice of such sale according to law:

Therefore, you, the said marshal, are hereby commanded to cause said 258 bales and one bag of cotton, so ordered to be sold, be sold in manner and form upon the notice, and at the time and place by law required. And that you have the money arising from such sale in said court, at Springfield, on the first Monday of June, eighteen hundred and sixty-three, and that you then pay the same to the clerk of the court; and have you also then and there this writ.

Witness the honorable Samuel H. Treat, judge of said court, this 20th day of April, in the year of our Lord one thousand eight hundred and sixty-three, and of our Independence the 87th year.

[SEAL.] S. A. CORNEAU, *Clerk.*

L. WELDON, *Proctor.*

(Endorsed:)

Return.

By virtue of this writ, I sold, on the 15th day of May, 1863, the within-described property, for the sum of forty-one thousand six hundred forty-nine and $\frac{20}{100}$ dollars.

D. L. PHILLIPS,
U. S. Marshal,
Per E. H. FINCH,
Deputy.

Paid to W. P. Halliday, by order of court, the value of 82 bales, being the sum of $13,432.26c.

D. L. PHILLIPS,
U. S. Marshal.

(Endorsed:) Filed this 23d day of June, A. D. 1863. , clerk.

And afterwards, to wit, on Monday, the eighth day of June, at the June term of said court, in the year aforesaid, the following further proceedings were had in said court, and entered of record, to wit:

UNITED STATES ON THE RELATION OF A. M. Pennock, &c.
vs.
258 BALES AND 1 BAG OF COTTON. } In admiralty.

The marshal having returned on the monition issued in this cause that he had attached the said two hundred and fifty bales and one bag of cotton, and had given due notice to all persons claiming the same that the court would on this day proceed to the trial and condemnation thereof, should no claim be interposed therefor:

This day came the libellants, by their advocate, L. Weldon, esq., and, upon their motion, proclamation was made for all persons interested in the said two hundred and fifty-eight bales and one bag of cotton to appear and interpose their claim therefor. And no person appearing to answer said motion, it is ordered, adjudged, and decreed by the court that the default of all persons be, and the same are hereby, accordingly *hereby* entered, and that the allegations of the libel be taken as true against said property; and that the same be condemned as forfeited to the United States.

It is further ordered, adjudged, and decreed by the court that the said two hundred and fifty-eight bales and one bag of cotton be sold by the marshal, under and by virtue of a writ of "venditioni exponas," to be issued by the clerk of this court, in accordance with the rules and practice of this court; and that upon the return thereof the marshal pay the proceeds of such sale into the depository of the court.

And afterwards, to wit, on Saturday, the twentieth day of June, at the term and in the year last aforesaid, the following further proceedings were had in said court and entered of record, to wit:

UNITED STATES, EX REL. A. M. PENNOCK, &C.,
vs.
TWO HUNDRED & FIFTY-EIGHT BALES & 1 BAG cotton. } In admiralty.

This day came the U. States by the dist. att'y, and on his motion the decree heretofore entered in this cause is set aside as to eighty-two bales of cotton, and the cause as to eighty-two bales of cotton is, on the motion of the dist. att'y, dismissed.

It is further ordered that the decree be set aside as to eight bales of the cotton, and leave is given to B. S. Compton to intervene as to the same.

It is further ordered that the decree be set aside as to six bales of cotton, and leave is given to W. R. Musgrave to intervene as to the same.

And on the same day and year last aforesaid the deposition of
12 Henry S. McLellan, in behalf of B. S. Compton, claimant of eight bales of said cotton, was filed in the office of the clerk of said court, which said deposition is in the words and figures following, to wit:

Be it remembered that on the application of Benjamin S. Compton, claimant in a suit now pending in the district court of the United States for the southern district of Illinois, wherein the United States and A. M. Pennock are libellants and Two hundred and fifty-eight Bales of Cotton are defendants, I, Henry Berry, a notary public in and for the county of Saint Louis, in the State of Missouri, have, this 19th day of June, A. D. 1862, at the city of St. Louis, in the county of St. Louis and State aforesaid, without having given notice to the said libellants or their counsel, proceeded to examine Henry S. McLellan as a witness on

behalf of the claimant in the aforesaid suit; and I certify that the reason for taking said deposition is, and the fact is, the said witness resides at the city of Saint Louis aforesaid, more than one hundred miles from Springfield, Illinois, the place where the court in which said cause is expected to be tried is appointed by law to be held, and the reason why notice of time and place of taking said deposition was not given to the said libellants or their counsel is libellants and their counsel reside in the city of Springfield, Illinois, more than one hundred miles from Saint Louis, the place where said deposition was taken.

And I do further certify that the said Henry S. McLellan, being by me carefully examined, cautioned, and duly sworn to testify the whole truth, says:

I was in the employ of Ranger & Compton from the month of November, 1862, till the last of February, 1863, about four months; I was acting as general clerk for them on the steamboat Evansville, engaged in the purchase of cotton on the Lower Mississippi River.

I know of B. S. Compton purchasing from one Lafayette Jones, at Rose Dale Landing, eight bales of cotton, which was paid for and delivered at that place; it was afterwards taken from there by the United States gunboat Conestogo and turned over to the United States marshal at Cairo on the 15th day of May, 1863; it was sold at public sale by the marshal at Cairo; it was sold in a lot of one hundred and seventy-six bales; I mean these eight bales was comprised in a lot of that amount that was sold on that day; I identified these eight bales by their being put up in a large-sized rope baling; there was no other cotton in the whole lot at Cairo, consisting at the time of some seven or eight hundred bales, that was put up in the manner of these eight bales.

I mentioned these eight bales at the time to Mr. Phillips, the marshal, and told him they belonged to Mr. Compton; at that time Mr. Compton owned all the cotton that had previously been owned by Ranger & Compton, and which had not been otherwise disposed of by them; he had bought Mr. Ranger out.

The particulars of our trading with the people of the Lower Mississippi, and Ranger & Compton's authority for the same, I have fully stated in my deposition, taken before Henry Berry and now on file in the United States district court for the southern district of Illinois, in a certain cause therein wherein the United States are libellants against eighty-six bales of cotton, and the United States against one hundred & thirteen bales & two bags of cotton, and wherein B. S. Compton is claimant.

HENRY S. McLELLAN.

Subscribed and sworn to before me this 18th day of June, A. D. 1863.

HENRY BERRY,
Not. Public.

And I do further certify that the preceding deposition was reduced to writing by me, and signed by the said Henry S. McLellan in my presence, and that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof.

Witness my hand and notarial seal this 19th day of June, A. D. 1863.

[SEAL.]

HENRY BERRY,
Not. Public St. Louis, Mo.

Filed June 20, 1863.

Which said deposition was opened at the instance of S. M. Cullom, proctor for claimant, on the 26th day of June, A. D. 1865.

And afterwards, to wit, on Monday, the sixth day of July, at a special term of said court in the year A. D. 1863, the following further proceedings were had in said court and entered of record, to wit:

UNITED STATES, EX REL. & A. M. PENNOCK,
vs.
TWO HUNDRED AND FIFTY-EIGHT BALES AND one bag of cotton. } In admiralty.

This cause having been dismissed as to eighty-two bales of the cotton libelled, and the marshal having made return to the writ of ven-
13 ditioni exponas issued herein on the twentieth day of April, one thousand eight hundred and sixty-three, that he sold the remaining one hundred and seventy-six bales and one bag cotton for the sum of twenty-eight thousand two hundred and seventeen dollars and seventy-three cents, and this cause now coming on to be heard for a final decree, it is ordered and decreed by the court that the following allowances be made out of said proceeds for costs and expenses herein: The clerk the sum of sixteen dollars and seventy-five cents, the district attorney the sum of twenty dollars, and the marshal the sum of one thousand one hundred and forty-three dollars and twenty-eight cents.

It is further ordered and decreed by the court that one-half of the balance of said proceeds, amounting to the sum of thirteen thousand five hundred and eighteen dollars and eighty-five cents, be paid into the Treasury of the United States, and that the remaining half, amounting to the sum of thirteen thousand five hundred and eighteen dollars and eighty-five cents, be paid to A. M. Pennock, the informer in this cause.

And afterwards, to wit, on the thirteenth day of July, in the year last aforesaid, the claim and answer of B. S. Compton, claimant of eight bales of said cotton, was filed in the office of the clerk of said court, which said claim and answer is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
State of Illinois, Southern District of Illinois:

In the district court of the U. S. for the southern district of Illinois, June term, 1863.

The claim and answer of Berymin S. Compton, owner & claimant of *of* eight bales of cotton, to the libel of information of L. Weldon, on behalf of the United States, and of A. M. Pennock, against the said eight bales of cotton or the proceeds thereof.

And now comes the said Berry. S. Compton, owner as aforesaid, and for answer to the libel against said cotton, doth allege & propound as follows, to wit:

1st. That he is the true and bona-fide owner of said eight bales of cotton or the proceeds thereof, and no other person is the owner thereof.

2nd. That it is true as alleged in said libel that said cotton was purchased in a district of country or part of the United States which before said purchase had been declared by the President of the U. S. to be under insurrectionary controll, and that the same was brought into a

district of country or part of the United States not under insurrectionary controll; but this respondent alleges the facts to be as follows:

That some time in the month of January, A. D. 1863, this respondent & his partner, Gustavus Ranger, purchased said eight bales of cotton of one L. Jones, of Mississippi, and paid him the cash for the same; that the said Jones by agreement did deliver the same to respondent on the bank of the Mississippi River, at Rosedale Landing in said State, and while said cotton remained at said point & before respondent had an opportunity of taking the same away, to wit, on or about the first day of Feb'ry, 1863, the gunboat Conestaga, or the parties having said boat in charge, without authority from the government and without the consent of respondent or his partner, Gustavus Ranger, or their agent, took possession of said cotton and carried the same up the Mississippi River to Cairo, in the State of Illinois, and at that point the same was seized by the marshal of the southern district of Illinois.

Respondent alleges that said eight bales of cotton so seized by said marshal was a part of a lot of cotton in the aggregate amounting to 258 bales, libelled herein, and that said eight bales of cotton formed a part and parcel of said 258 bales.

Respondent alleges that he & one Gustavus Ranger were partners in the purchase of said cotton, and that soon after the purchase said Ranger sold all his interest in said cotton to respondent, & their partnership was dissolved by agreement.

Respondent alleges that he & his partner had regular government permits & licenses to purchase said cotton from the proper authorities of the United States, and that they had a right to purchase and own the same without hindrance.

Respondent further alleges that he and his partner, Gustavus Ranger, have always been & are true & loyal citizens of the United States, and have done nothing in aid of the rebellion against said government. Respondent denies that said cotton belongs to a person in armed rebellion against the Government of the United States.

Respondent alleges that all and singular the above premises are true in substance and fact, wherefore he prays that said eight bales of cotton, or the proceeds thereof, be restored to him.

B. S. COMPTON.

Filed this 13th day of July.

14 And afterwards, to wit, on Friday, the eleventh day of September, in the year last aforesaid, the following further proceedings were had in said court and entered of record, to wit:

THE UNITED STATES, ON RELATION OF A. M. Pennock, *vs.* TWO HUNDRED AND FIFTY-EIGHT BALES AND one bag cotton.	In admiralty.

On motion of the district attorney, leave is granted him by the court to amend his libel in this cause by striking out the first allegation.

And afterwards, to wit on Monday, the fifth day of October, at a special term of said court, in the year last aforesaid, the following further proceedings were had in said court and entered of record, to wit:

THE UNITED STATES, ON RELATION OF A. M. Pennock, *vs.* TWO HUNDRED AND FIFTY-EIGHT BALES OF cotton. } In admiralty.

It is ordered by the court that an additional allowance of two hundred and eighty dollars be made to the district attorney for his services in this cause.

And afterwards, to wit, on Wednesday, the fourth day of November, at a special term of said court, in the year last aforesaid, the following further proceedings were had in said court and entered of record, to wit:

THE UNITED STATES, ON RELATION OF A. M. Pennock as informer, *v.* TWO HUNDRED AND FIFTY-EIGHT BALES AND one bag of cotton. } In admiralty.

The decree rendered in this cause on the eighth day of June last having been set aside as to eight bales of cotton, it is ordered by the court that so much of the decree of distribution entered herein on the sixth day of July last as directs the payment of the residue of the proceeds of sale in this cause to the United States and to the informer herein be set aside.

It is further ordered and decreed that the marshal retain in his hands out of said proceeds the sum of one thousand three hundred and ninety-seven dollars and thirty cents, being the amount for which the said eight bales of cotton were sold, and that he pay into the Treasury of the United States one-half of the residue of said proceeds, amounting to the sum of twelve twousand six hundred and eighty dollars and twenty cents, and to A. M. Pennock, the informer herein, the remaining half thereof, amounting to the sum of twelve thousand six hundred and eighty dollars and twenty cents.

And afterwards, to wit, on Saturday, the twenty-second day of February, in the year of our Lord one thousand eight hundred and sixty-eight, the following further proceedings were had in said court and entered of record, to wit:

THE UNITED STATES, ON RELATION OF A. M. Pennock, as informer, *v.* TWO HUNDRED AND FIFTY-EIGHT BALES AND one bag of cotton. } In admiralty.

The sum of one thousand four hundred and twenty dollars and eighty-two cents having been deposited in the office of the assistant treasurer of the United States at St. Louis, subject to the order of the court in this cause, and this cause now coming on for final decree upon the claim of B. S. Compton to the proceeds of eight bales of the cotton libeled herein, the court finds that the said B. S. Compton was the owner of the said eight bales of cotton, and is entitled to the proceeds thereof. It is therefore ordered and decreed by the court that the proceeds of said eight bales of cotton, amounting to the sum of one thousand three hundred

and ninety-seven dollars and thirty cents, be paid to said B. S. Compton. And it appearing to the court that of the amount deposited in the office of the assistant treasurer of the United States at St. Louis, subject to the order of the court in this cause, the sum of twenty-three dollars and fifty-two cents was an overpayment, erroneously made by
15 David L. Phillips in the deposit of the sum of ninety-two thousand six hundred and fifty-two dollars and seventy-eight cents, made by him as marshal in this and other causes on the eleventh day of July, A. D. 1863, it is ordered that said sum of twenty-three dollars and fifty-two cents be refunded to said David L. Phillips.

UNITED STATES OF AMERICA,

Southern District of Illinois, ss:

I, George P. Bowen, clerk of the district court of the United States for the southern district of Illinois, do hereby certify that the foregoing is a full, true, and complete transcript of the record and proceedings had in said court in a certain cause lately pending therein, wherein the United States, on relation of A. M. Pennock as informer, was libellant, and two hundred and fifty-eight bales and one bag of cotton was defendant, as appears the records and files of said court in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in the city of Springfield, in said district, this ninth day of May, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the one hundred and second.

[SEAL.] GEO. P. BOWEN, *Clerk.*

V. The cotton thus finally condemned as forfeited was the claimant's cotton captured and seized as set forth in the second finding, and all the money decreed to be paid over, one-half to the United States Treasury and the other half to Capt. A. M. Pennock as informer, was the proceeds of his said cotton.

VI. Said sum of $12,680.20 decreed to be paid into the Treasury was so paid by the United States Marshal.

VII. The balance, a like amount, decreed to be paid to Captain Pennock as informer, was included with other money received and decreed in like manner by said court in other cases, making in all $59,943.42, and a check therefor drawn by the marshal on the assistant treasurer at Saint Louis, with whom the proceeds of cotton libeled in said court had been deposited, was given to said Pennock, who handed the same to Admiral Porter as the real informer. Admiral Porter declined to accept the same as informer, but received the check and forwarded it to the Secretary of the Navy for distribution among the officers and crews of his squadrons as captors. Subsequently it was deposited by said Porter, by order of the Secretary of the Navy, with said assistant treasurer at Saint Louis, and said Porter's check therefor was given into the control of the district court of the United States for the District of Columbia, by said Porter, and such proceedings were had thereon as appear by the following duly certified copies of the records of said court:

OFFICE UNITED STATES DISTRICT ATTORNEY,
Washington, D. C., July 12, 1864.

To the honorable the judge of the United States district court for the District of Columbia:

I have the honor to transmit herewith a paper signed by David D. Porter, rear-admiral commanding the Mississippi squadron, relative to

the sum of $59,943.42 decreed to said Porter as informer by the United States district court for the southern district of Illinois, in certain cases therein adjudicated. Rear-Admiral Porter declines to receive the money as informer, and, with most honorable and just intentions, through his counsel, Mr. Charles Eames, and through the Navy Department, invokes the aid of the United States district court for this District to distribute, in a formal and proper way, the sum of money specified among the officers and crews of the vessels making the captures of the property sold by the decrees of the court heretofore referred to.

I desire to have the case put upon the docket, as by the consent of the parties, and upon the paper referred to and upon the check on the assistant United States treasurer at Saint Louis, Mo., payable to the order of the Assistant Treasurer at Washington, D. C., and indorsed, "Prize-money of Mississippi squadron, deposited with Assistant Treasurer, by order of the Secretary of the Navy, by Rear-Admiral David D. Porter, commanding Mississippi squadron," I shall base a motion for a decree of distribution.

E. C. CARRINGTON,
United States District Attorney,
Per NATH'L WILSON,
Assistant District Attorney.

16 WASHINGTON, D. C., *July* 7, 1864.

I hereby certify that the sum of $59,943.42, now on deposit with the assistant treasurer at Saint Louis, Mo., and represented by my draft for the said amount to order of the Assistant Treasurer at Washington, under date of Cairo, January 3, 1864, is the moiety of several amounts decreed by the United States district court at Springfield, Ill., to be forfeited to the United States, which said moiety was decreed to me as informer, in which capacity I decline to receive it, holding myself to be, as commanding officer of the Mississippi squadron, one of the captors, and that the said amount ought to be distributed to the ship's companies entitled thereto according to the law of distributing prize-money, and I invoke the aid of this honorable court to the end that such distribution may take place through its decree to that effect.

And I certify that, to the best of my knowledge and belief, the money rightfully belongs to the ships' companies of the following vessels of the Mississippi squadron, by which I believe the property, of which it is the proceeds, to have been captured. The vessels are the following: Forest Rose, Curlew, General Pillow, New Era, Louisville, Mound City, Conestoga, Marmora, Signal, Pittsburg, Cincinnati, General Lyon, Romeo, Carondelet, Tylor, Petrel, Black Hawk, and tugs.

DAVID D. PORTER,
Rear-Admiral, Commanding Mississippi Squadron.

United States district court for the District of Columbia.

Present, David K. Cartter, chief justice.

UNITED STATES
vs.
$59,943.42 PRIZE-MONEY, MISSISSIPPI SQUADRON, &c.

It is ordered by the court in admiralty sitting, this thirteenth day of July, A. D. 1864, that the check accompanying the petition of Rear-

Admiral David D. Porter, and signed by the said Porter, for the sum of $59,943.42, and endorsed as follows: "Prize-money of Mississippi squadron, deposited with Assistant Treasurer by order of the Secretary of the Navy, by Rear-Admiral David D. Porter, commanding Mississippi squadron," be deposited by the marshal with the Assistant Treasurer at Washington, and that the money therein described, being the sum of $59,943.42, remain in the hands of the said Assistant Treasurer subject to the further order of this court.

By order of the court.

[SEAL.] D. K. CARTTER,
Chief Justice.

At a stated term of the United States district court for the District of Columbia, held at the United States court-rooms in the city of Washington, on Wednesday, the thirteenth day of July, in the year of our Lord one thousand eight hundred and sixty-four.

Present, David K. Carter, chief justice.

THE UNITED STATES
vs.
$59,943.42, PRIZE-MONEY OF MISSISSIPPI SQUADRON deposited with Assistan' Treasurer, by order of the Secretary of the Navy, by Rear-Admiral David D. Porter, commanding Mississippi squadron.

It appearing to the court that there is the sum of fifty-nine thousand nine hundred and forty-three dollars and forty-two cents deposited with the assistant U. S. treasurer at St. Louis, Missouri, subject to the order of the Assistant U. S. Treasurer at Washington, and that the said amount was decreed to Rear-Admiral David D. Porter, as informer, by decree passed by the United States district court for the southern district of Illinois, in certain cases there adjudicated:

And it further appearing to the court that the said Rear-Admiral David D. Porter declines to receive the said sum of money, or any part thereof, as informer, and desires that the same be distributed as prize-money among the officers and crews of the vessels making the captures of the property condemned by the decrees of the court hereinbefore referred to;

And it further appearing to the court that the said Rear-Admiral David D. Porter regards the following-named vessels as entitled to share in the distribution of the said fund, and that by agreement, con-
17 sent, and understanding by and between the said Rear-Admiral David D. Porter and the officers and crews of the vessels hereinafter to be named, the vessels hereinafter named are entitled to the proportion of the said sum of $59.943.42 hereinafter stated;

And it further appearing that the aggregate sum of the costs and disbursements herein, as by the adjustment on file in the office of the clerk will appear, is eleven hundred and ninety-eight dollars and eighty-six cents, and that the net amount for distribution on the basis of the said adjustment is fifty-eight thousand seven hundred and forty-four dollars and fifty-six cents;

It is now ordered and decreed, on the motion of the district attorney, the counsel for the captors being present in open court and assenting to the same, that the aforesaid net amount be distributed among the following-named public vessels of the United States as follows:

To the Forest Rose, two thousand six hundred and forty-four dollars and eighty-three cents.

To the Curlew, two thousand two hundred and seventy-seven dollars and seventy-eight and one-half cents.

To the General Pillow, four hundred and thirty-six dollars and thirty-six cents.

To the New Era, five hundred and thirteen dollars and eighty-three cents.

To the Louisville, five thousand and sixty-six dollars and seventy-nine cents.

To the Mound City, five thousand and sixty-six dollars and seventy-nine cents.

To the Conestoga, four thousand and ninety-four dollars and ninety-four cents.

To the Marmora, four thousand five hundred and thirty-one dollars and ninety-four cents.

To the Signal, five thousand four hundred and seventeen dollars and two cents.

To the Pittsburg, five thousand and sixty-six dollars and seventy-nine cents.

To the Cincinnati, five thousand and sixty-six dollars and seventy-nine cents.

To the General Lyon, two hundred and sixty-eight dollars and forty-seven cents.

To the Romeo, two thousand three hundred and forty-one dollars and fifty-one cents.

To the Carondelet, five thousand and sixty-six dollars and seventy-nine cents.

To the Tylor, eight thousand eight hundred and fifty-eight dollars and twenty-one cents.

To the Petrel, two thousand and thirty-nine dollars and thirty-eight cents.

To the Black Hawk and tugs, two thousand nine hundred and eighty-six dollars and thirty-four cents.

By order of the court.

D. K. CARTTER, *Ch'f Justice.*

District court of the United States for the District of Columbia.

Clerk's certificate of costs.

UNITED STATES *vs.* 59,943.42, PRIZE-MONEY OF MISSISSIPPI SQUADRON, deposited with assistant treasurer, by order of the Secretary of the Navy, by Rear-Admiral David D. Porter, commanding Mississippi squadron.	No. .	In prize.

Amount of sales as per marshal's return		$59,943 42
Amount of costs taxed by the court		
District attorney	$424 58	
Marshal	149 85	
Counsel for captors	599 43	
Clerk	25 00	
Prize commissioners		
		1,198 86
Balance for distribution		58,744 56

Examined and certified this 13th day of July, A. D. 1864.

D. K. CARTTER,
Ch'f Justice.

18 United States district court for the District of Columbia.

UNITED STATES *vs.* $59,943.42, PRIZE MONEY OF MISSISSIPPI SQUADRON, deposited with Assistant Treasurer, by order of the Secretary of the Navy, by Rear-Admiral David D. Porter, commanding Mississippi Squadron.	No. .	Prize.

It is ordered by the court, in admiralty sitting, this thirteenth day of July, A. D. 1864, that in the above-entitled case the sum of eleven hundred and ninety-eight dollars and eighty-six cents having been taxed and allowed as costs, that the same be paid to the deputy U. S. marshal, G. W. Phillips, for the District of Columbia, and that the balance remaining in the hands of the Assistant Treasurer of the United States at Washington, D. C., being the sum of fifty-eight thousand seven hundred and forty-four dollars and fifty-six cents, to be paid into the Treasury of the United States, to be distributed according to the terms of the decree passed by this court.

[SEAL.] (Signed) D. K. CARTTER,
Ch'f Justice.

VIII. In pursuance of said orders of the district court of the District of Columbia, said money was deposited with the Assistant Treasurer at Washington, and the final balance, $58,744.56, was covered into the Treasury "on account of money received for prize-money belonging to the Mississippi Squadron," "to go to the credit of the captors"; and thereafter said money was paid out of the Treasury in accordance with the terms of the decree of said court hereinbefore set out.

IX. On the 28th of August, 1862, the Secretary of the Navy issued the following order:

NAVY DEPARTMENT, *August* 28, 1862.

The attention of naval officers is called to the regulations of the Secretary of the Treasury concerning commercial intercourse with insurrectionary States or sections, dated August 28, 1862.

I. Commanders of naval vessels will render such aid as may be necessary in carrying out the provisions of said regulations, and enforcing observance thereof to the extent directed by the Secretary of the Treasury, so far as can possibly be done without danger to the operations or safety of their respective commands.

II. There will be no interference with trade in or shipments of cotton or other merchandise conducted in pursuance of said regulations within any of the waters controlled by the naval forces of the United States, unless absolutely necessary to the successful execution of military or naval plans or movements. But in cases of the violation of the conditions of any clearance or permit granted under said regulations, and in cases of unlawful traffic, the guilty party or parties will be arrested and the facts promptly reported.

III. No officer of the Navy will seize cotton or other property of individuals within the territory opened to traffic and subject to the regula-

tions of the Secretary of the Treasury, unless the same is exposed to destruction by the enemy, or needed for naval purposes, or for confiscation under the act of Congress; and in all such cases the fact, with all attendant circumstances, shall be promptly reported to the department.

GIDEON WELLES,
Secretary.

The following order was issued by the Secretary of the Navy, but it does not appear when, if at all, it reached or was forwarded to the officers of the Mississippi Squadron:

NAVY DEPARTMENT,
Washington, March 31, 1863.

For the purpose of more effectually preventing all commercial intercourse with insurrectionary States, except such as shall be authorized in pursuance of law, and of securing consistent, uniform, and efficient action in conducting such intercourse as shall be so authorized, and for the purpose of carrying out the provisions of an act of Congress entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary States," approved March 12, 1863, it is hereby ordered:

I. That no officer of the Navy of the United States, nor other person connected therewith, shall authorize, or have any interest in the
19 transportation of any goods, wares, or merchandise (except supplies belonging to or contracted for by the United States, designed for the military or naval forces thereof, and moving under military or naval orders, and except also suttlers' supplies and other things necessary for the use and comfort of the naval forces of the United States, and moving under permits of the authorized officers of the Treasury Department) into any State declared by the President to be in insurrection; nor authorize nor have any interest in the purchase or sale therein of any goods or chattels, wares or merchandise, cotton, tobacco, or products of the soil thereof; nor the transportation of the same, except as aforesaid, therefrom or therein; nor shall any such officer or person authorize, prohibit, or in any manner interfere with any such purchase or sale or transportation which shall be conducted under the regulations of the Secretary of the Treasury, unless under some imperative military necessity in the place or section where the same shall be conducted, or unless requested by an agent or some other authorized officer of the Treasury Department, in which case all officers of the Navy of the United States and other persons connected therewith will render such aid in carrying out the provisions of the said act and of the law, and in enforcing due observance of the said regulations of the Secretary of the Treasury, as can be given without manifest injury to the public service.

II. It is further ordered that every officer, sailor, or marine in the naval service of the United States who shall receive or have under his control any property which shall have been abandoned by the owner or owners, or captured in any district declared to be in insurrection against the United States, including all property seized in any such district under naval orders, excepting only such as shall be required for the use of the naval forces of the United States and as is excluded by the act of March 12, 1863, shall promptly turn over all such property to the agent appointed by the Secretary of the Treasury to receive the same, who shall give receipts therefor, if desired.

And every such officer, sailor, or marine shall also turn over to such

agent, in like manner, all receipts, bills of lading, and other papers, documents, and vouchers showing title to such property or the right to the possession, control, or direction thereof, and he shall make such order, indorsement, or writing as he has power to make to enable such agent to take possession of such property or the proceeds thereof. Arms, munitions of war, forage, horses, mules, wagons, beef cattle and supplies which are necessary in naval operations shall be turned over to the proper officers for the use of the navy. All other property abandoned, captured, or seized as aforesaid shall be delivered to the said agent of the Treasury Department.

The officer receiving or turning over such property shall give the usual and necessary invoices, receipts, or vouchers therefor, and shall make regular returns thereof, as prescribed by the Navy regulations. The receipts of the agents of the Treasury Department shall be vouchers for all property delivered to them. And whenever called upon by the said agent of the Treasury Department authorized to receive such abandoned or captured or seized property, as aforesaid, or the proceeds thereof, all persons employed in the naval service of the United States will give him full information in regard thereto, and, if requested by him so to do, they shall give him duplicates or copies of the reports and returns thereof, and of the receipts, invoices, and vouchers therefor.

And every officer of the Navy of the United States hereafter receiving abandoned or captured or seized property, in any insurrectionary State, as aforesaid, or the proceeds thereof, or under whose order it may be applied to the use of the naval forces, as aforesaid, shall, upon request of an agent appointed by the Secretary of the Treasury as aforesaid, render a written report, with invoices thereof, to said agent, in which he will specify the arms, supplies, or other munitions of war retained for use of the naval forces as aforesaid, and also, separately, the property turned over to said agent, or which may have been sold or otherwise disposed of. And in case a sale of any such property shall be made under his authority, or under the authority of any one subject to his order, he will so state, and will describe the property so sold, and will state when and where and by and to whom sold, and the amount received therefor, and what disposition was made of the proceeds.

And all officers of the Navy of the United States will at all times render to the agents appointed by the Secretary of the Treasury all such aid as may be necessary to enable them to take possession of any abandoned or captured or seized property aforesaid, and in transporting the same, so far as can be done without manifest injury to the public service.

All expenses of transporting property herein referred to will be reported by the officers who furnish the transportation to the agent of the Treasury Department, and also, through the proper channels, to the Navy Department, at Washington, in order that the expenses may be reimbursed from the proceeds of sales of such transported property.

III. All naval officers in command of squadrons, vessels, or stations will, upon receipt of this order, revoke all existing orders throughout their respective commands conflicting or inconsistent herewith,
20 or which permit or prohibit or in any manner interfere with any trade or transportation conducted under the regulations of the Secretary of the Treasury not understood as applying to any lawful maritime prize by the naval forces of the United States; and their attention is particularly directed to said regulations, prescribed March 31,

1863, and they will respectively make such orders as will insure strict observance of this order throughout their respective commands.

GIDEON WELLES,
Secretary of the Navy.

X. The following correspondence took place between Admiral Porter and the Secretary of the Navy:

U. S. FLAG SHIP BLACK HAWK,
March 7, 1863.

SIR: In the last twenty days I have sent to Cairo 388 bales of captured cotton, valued at one hundred and thirty-nine thousand dollars, and have on hand, from the New Era No. 5 and other sources, two hundred and fifty-nine (259) bales, valued at ninety-one thousand dollars—two hundred and thirty thousand dollars in all. This cotton has been turned over to the marshal, at Cairo. In the Army, all cotton seized is sent to Memphis, and sold by the quartermaster for the use of the Army. If our paymaster at Cairo had the authority to sell the cotton, much of which has no ownership, he could easily keep the fleet supplied with funds.

Very respectfully,

DAVID D. PORTER,
Act'g Rear-Admiral, Comm'g Miss. Squadron.

HON. GIDEON WELLES.
Secretary of Navy, Washington.

NAVY DEPARTMENT,
March 28, 1863.

SIR: In reply to your letter of the 7th inst., you are informed that all property captured as "prize property" must be sent to a prize court for adjudication, and be disposed of as the court may decree.

The disposition of captured "abandoned property" is provided for by the recent act of Congress, approved March 12, 1863.

Very respectfully,

GIDEON WELLES.
Secretary of the Navy.

DAVID D. PORTER,
Act. Rear-Admiral, Commanding Miss. Squadron, Cairo, Ills.

XI. Agents, under the act of March 12, 1863, were appointed by the Secretary of the Treasury, April 4, 1863. It does not appear when they accepted the appointments, gave bonds, or first entered upon their duties.

CONCLUSION OF LAW.

The claimant is entitled to recover the sum of $12,680.20, paid into the Treasury as set forth in finding VI., and also the proportional part of the $58,747.56 paid as set forth in finding VIII, on the order of the district court of the District of Columbia, which was received by Admiral Porter through Captain Pennock and the district court of the southern district of Illinois, to wit, $12,426.60; in all, $25,106.80, for which the claimant is entitled to judgment.

Opinion of the court.

DAVIS, J., delivered the opinion of the court.

On the 18th of February, 1863, the claimant was in possession of a plantation in Mississippi, on the river, between Vicksburg and the mouth of the Red River. It had belonged to his testator, and had been left by the will in the occupancy of the executor. As executor he was the owner of 168 bales of cotton then on the estate. On that day this cotton was seized by the naval forces of the United States for purposes of naval defense, and was taken to Johnson's Landing, below Vicksburg, hauled across land to Young's Landing, and there, by order of
21 Admiral Porter, in command of the Mississippi squadron, was put on board the transport Rowena, together with 90 other bales.

On the 7th of March Admiral Porter reported the capture of this cotton, as required by the Secretary's general order of August 28, 1862, and on the 28th of March the Secretary of the Navy instructed him, in reply, that property captured as "prize property" must be sent to prize courts for adjudication, and that the disposition of captured abandoned property was provided for by the then recent act of Congress, approved March 12, 1863.

On the 31st March or the 1st April the Rowena left Young's Landing with the 258 bales of cotton, and arrived with them at Cairo, in Illinois, on or about the 7th April. There they were delivered to Captain Pennock, fleet-officer, acting under Admiral Porter.

On the 9th of April Captain Pennock lodged with the district attorney for the southern district of Illinois one information against the 258 bales, alleging that a part of it was seized "at Wilson Mitchell's Landing," and that "the balance" (which included the claimant's cotton) "was sent from the Yazoo River by Admiral Porter."

On the 17th April the district attorney libeled all the cotton, alleging that the 258 bales had been seized at Wilson Mitchell's Landing, and charging, first, that the seizure had been made for a violation of the non-intercourse act; and, second, that it had been made because the owner was in armed rebellion against the United States.

All the cotton was sold by order of court pendente lite. By proceedings not necessary to consider, the proceeds of the cotton of other owners were separated from the proceeds of the claimant's cotton, and were distributed by order of court.

On the 11th of September an amendment to the libel was allowed on motion of the district attorney. Though the amendment is loosely drawn, we think it operated to strike out the allegation that all the cotton was seized at Wilson Mitchell's Landing, an allegation which was evidently untrue.

On the 4th of November, 1863, a decree was entered that one-half the proceeds of the cotton should be paid into the Treasury, and that the other half should be paid to Captain Pennock as informer. Both payments were made in accordance with the decree. Subsequently, much the larger part of the informer's half found its way into the Treasury by proceedings which will be noticed hereafter.

The record of the proceedings in Illinois is loose and defective, but no more so than those which were sustained in the Confiscation Cases.* Most of the errors are identical with those which were put forward and overruled in that case. It is pressed upon us that the payment of half

* 20 Wall., 92.

the proceeds to an informer was without warrant of law. Conceding this, the claimant cannot inquire into it in these proceedings if the district court had jurisdiction of the case.* If the court had no jurisdiction, the inquiry is unnecessary.

Some question was made at the trial as to the nature of these proceedings. In our opinion the suit was begun and conducted under the provisions of the Confiscation act of July 17, 1862, with pleadings in some respects identical, and in most respects similar to the pleadings in the Confiscation Cases which are reported in the 20th Wallace. It must therefore stand or fall by that act.

The Attorney-General contends that the proceeds of the claim-
22 ant's cotton were duly confiscated in Illinois, and that the claimant is therefore debarred from pursuing them into the Treasury under the provisions of the Captured and Abandoned property act.

The claimant, on the other hand, maintains that the provisions of the Captured and Abandoned property act are repugnant to the provisions of the Confiscation acts; that the two cannot exist side by side; and that consequently the later repeals the earlier statutes.

Courts do not favor repeals of statute by implication. Although subsequent laws cover some, or even all the cases provided for by the prior statute, they may nevertheless be merely affirmative, cumulative, or auxiliary. In order to sustain a repeal by implication there must be a positive repugnancy between the provisions of the new law and those of the old† which makes it absolutely impossible to reconcile the two.‡ Especially, when there is a series of statutes on a subject, a court will endeavor to sustain the series as a whole;§ and it will not regard the prior statutes as repealed by a later one by implication unless the latter is either entirely inconsistent with the former, or revises the whole subject-matter and is evidently intended as a substitute for them.‖

The Confiscation act of July, 1862, first made provisions for the punishment of treason, which are still in force. Then it required the President, after public warning, to seize the property of persons engaged in armed rebellion. It authorized proceedings in rem to be instituted against it after seizure, for the purpose of condemnation and sale, and it directed the proceeds of the sale to be paid into the Treasury.

It was the evident purpose of Congress, as expressed in this legislation, that the property of disloyal enemies should be seized and sold through the instrumentality of the courts, and that the proceeds should pass into the Treasury.

The Captured and Abandoned property act, however, contemplated the seizure not only of the properties of disloyal persons, but those of loyal persons, as well, in enemies' country; and it created a new channel by which both might reach the Treasury. It further gave to a loyal owner who had never given aid or comfort to the rebellion the privilege of pursuing the proceeds of his cotton in this court; but as to a disloyal person it increased the rigor of the law, by authorizing a new, rapid, and arbitrary mode of converting his property into a means for suppressing the rebellion, which recognized the title of the United States as absolute in it from the day of the seizure. It made no change in the disposition

* Windsor v. McVeigh, 93 U. S., 274, and authorities cited in the opinion of the court
† Wood v. U. S., 16 Peters, 363.
‡ McCool v. Smith, 1 Black, 471.
§ White v. Johnson, 23 Miss., 68; The State v. Mister, 5 Md., 11.
‖ Farr v. Brackett, 30 Vt., 344; Giddings v. Cox, 31 Vt., 607; Longlois v. Longlois, 48 Ind., 60; Lewis v. Stone, 22 Wis., 234; New London R. R. Co. v. B. & A. R. R. Co., 102 Mass., 386.

which the Confiscation acts authorized the courts to make of that property. The privilege which a disloyal owner now enjoys comes to him from an executive act, which Congress attempted to set aside, and which would have been equally potent against an impending decree of confiscation.

A late and carefully considered opinion of the Supreme Court justifies this conclusion. The court there says: "In the indiscriminate seizure of private property, it seemed to Congress that friends might sometimes suffer. Therefore, to save them, it was provided that property when captured should be sold, and the proceeds paid into the Treasury of the United States. * * * As to all persons within the privileges of the act, the proceeds were to be held in trust, but as to all others, the title of the United States was absolute.*"

23 It is therefore clear that there is no conflict of principle between the earlier and later acts. The repugnancy which is to force a court to the irresistible conclusion that the Confiscationa cts are repealed by implication is to be found (if at all) in that provision relating to the machinery for its execution whereby all cotton and other specified kinds of property in enemy's country are subjected to it.

The Confiscation acts authorized the seizure of rebel property wherever found; the Captured and Abandoned property act only of certain kinds of property in the enemy's country. The former contemplated the condemnation and sale only of the rebel's interest in the property; the latter proceeded against the property itself, and put the absolute title to it in the State. The former, or at least the act of 1861, was a permanent measure; the latter was a temporary act, and expired with the rebellion. The former were repealed, if at all, on the passage of the new statute. The effective force of the latter against property was suspended until the Secretary of the Treasury should appoint agents to execute its provisions.

Thus it appears not only that the subject-matter and the duration of the earlier and of the later statutes are dissimilar, but also that the supposed date of the extinction of the former and the actual time when the latter became operative were not identical. It follows that conclusions drawn from the description of property affected by the act of 1863 are subject to serious modifications and exceptions, if we halt before the further conclusion that the new remedy was cumulative and auxiliary.

The decisions of the Supreme Court in the cotton cases afford few glimpses of its leanings on this question. In only one reported case of this class was an opportunity offered to the court to hold the Confiscation acts repealed by the Abandoned and Captured property act. In Morris's case† the proceedings were against cotton under the Confiscation acts. The monition was issued in May, 1866, and the decree of the court below, confiscating the cotton, was rendered December 20, 1866. The court above reversed the decree on the ground of irregularity in the proceedings, and in an elaborate opinion took no notice of the present point, which would have been fatal to the judgment if taken. The decision is therefore authoritative only so far as silence, when opportunity was offered the court to speak, is to be regarded as indicative of its views.

In Klein's‡ case Mr. Chief Justice Chase called attention to the fact that no provision is made in the Captured and Abandoned property act for the confiscation of the property of disloyal owners, and added that whether restoration would be made to those who had not continually adhered to the government or confiscation would be enforced was left

* Collie's case, not yet reported.
† 8 Wall., 507.
‡ 13 Wall., 128.

to be determined by considerations of public policy subsequently to be developed. If we may draw conclusions from such casual expressions, it is not unreasonable to assume that the late learned Chief Justice was of opinion that the Confiscation act was still in force, and that its powers might be invoked.

In Sprott's case* Mr. Justice Field argued that the title of that claimant remained on the day of the delivery of the property as perfect as it did the day the cotton was seized, because no proceedings under the Confiscation acts had been instituted by the government for the condemnation and forfeiture of the cotton seized or its proceeds.

We are not insensible to the injustice of drawing positive conclusions from such isolated utterances. Every judge knows that expressions will creep into the most carefully prepared opinion which, when
24 separated from their context, are capable of being distorted to conclusions quite contrary to those entertained by their author. Making due allowance, however, these passages in the reports are not without weight; and there are in addition two late real estate cases which may fairly be deemed to throw more positive light on the views of the higher court.

The first is Semmes's case.† He was the owner of certain real estate in Louisiana, against which proceedings for confiscation were instituted August 7, 1863. The Captured and Abandoned property act did not at that time apply to real estate; but on the 21 July, 1864, it was extended by Congress so as to include all descriptions of property mentioned in the act of July 17, 1862, including real estate. About nine months after the passage of the act of 1864, the district court of Louisiana rendered judgment condemning Semmes's property under the act of 1862. His real estate was sold under that judgment. The proceedings were brought before the Supreme Court and judgment affirmed.

In the second case‡ lands in Arkansas were, on the 16th February, 1865, seized pursuant to instructions from the district attorney for the purpose of confiscation. On the 17th of that month they were libeled in the proper court, and on the 5th of the following April a decree of condemnation was entered, under which the lands were sold. On appeal the proceedings were sustained so far as they affected the interest of the then owner.

No question of jurisdiction was raised in these cases; but the court might have considered it of its own motion.§ It is difficult to see how the judgments could have been rendered if the provisions of the act of July 17, 1862, affecting real estate, were repealed by the amendments made in 1864 to the act of March 12, 1863.

In view of all this, we cannot think that Congress intended in every case to substitute the captured and abandoned property act, a statute limited in scope and temporary in duration, for the confiscation acts, with broader provisions and more enduring life; or that it designed, in the midst of war, to cut short all power of disposing of enemies' property captured in the enemies' country, until an executive officer whom the Constitution clothes with no legislative functions should revive the power in another form.

Even if it were not matter of history, of which we may take judicial notice, the record in this case would tell us under what circumstances the captured and abandoned property act was passed. The armies and fleets of the government were in the heart of the insurgent country.

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*20 Wall., 459.

†91 U. S., 21.

‡Pike v. Wassel, 94 U. S., 711.

§Herriott v. Davis, 2 W. & M., 229.

Its wealth, so far as they penetrated, was within their grasp. Properties of friend and foe alike were held subject to the merciless rights of war. The statute, which has been well styled "liberal and beneficial legislation,"* interposed its shield to save all from destruction or ravage; to lodge the property of friends where they might in more peaceful times seek its proceeds; and to give the government the use of the wealth which its enemies would otherwise employ for is overthrow. The President's power to seize, under the act of August, 1861, property employed in aiding, abetting, or promoting the insurrection, or under the act of 1862, the properties of persons serving or holding office under the Confederate States or any of them, or any person in the loyal States who should give aid and comfort to the rebellion, or of persons in the disloyal States who should be actually engaged therein, was left unchecked by it; and no restraint was placed upon the subsequent proceedings
25 authorized by those statutes for the condemnation and sale, as confiscated, of any properties which might be so seized under executive order.

Without such a previous seizure under an executive order, however, for the purpose of confiscation, no proceedings could be properly instituted under the confiscation act of July 17, 1862,† and as a district court of the United States is a court of limited jurisdiction, although not an inferior court,‡ and as it must always appear in the record that it has jurisdiction of the particular case which it attempts to adjudicate,§ the record in any proceeding for confiscation must show an executive seizure of the property condemned before the court assumed jurisdiction over it.‖ And if the facts necessary to give the court jurisdiction do not appear in the record, its jurisdiction may be inquired into in every other court where the proceedings are relied upon and brought before the latter by a party claiming the benefit of them.¶

In the present case no such executive order preceded the confiscation proceedings. The claimant's cotton was seized by the naval forces of the United States, under the general executive order of August 28, 1862, for the purpose of naval defense. The admiral in command reported the seizure as required by the order, and was instructed by the Secretary of the Navy, on the 28th of March, to hold the cotton under the abandoned and captured property act. This executive order struck at the root of the proceedings in Illinois; and when the district attorney libelled the cotton, he did not, because he could not, aver that it had been seized by executive order for the purpose of confiscation. The condemnation and sale under such a record are void, and for such portion of the claimant's cotton as passed into the Treasury he is entitled to a judgment in this action, notwithstanding the judgment in Illinois.

We all agree that he is entitled to recover the moiety which the district court in Illinois decreed to be paid into the Treasury, and which was paid in after the passage of the abandoned and captured property act, notwithstanding the fact that the seizure of the cotton was made before the passage of that act. The decision as to the remainder is concurred in by only a majority of the court.

The suit in which the claimant's cotton was condemned was one of many similar suits brought to judgment in the district court for the

* Alexander's Case, 2 Wall., 422.
† The Confiscation Cases, 20 Wall., 108.
‡ Thompson v. Lyle, 3 Watts & Serg., 166.
§ Ex parte Smith, 94 U. S., 456.
‖ The Confiscation Cases, sup.
¶ Williamson v. Berry, 8 Pet., 540, cited with approval in Thompson v. Whitman, 18 Wall., 567.

southern district of Illinois at that term, in all of which Captain Pennock appeared as informer. In each of the suits a moiety of the proceeds was adjudged to him; and at the close of the term he received one check for $59,943.42, as representing the aggregate of the various sums so decreed to him. This identical check he handed to Admiral Porter as his superior officer. Admiral Porter was unwilling to receive or keep it as an informer, and sent it to the Secretary of the Navy for distribution among the officers and crew of the Mississippi squadron as captors. The Secretary of the Navy refused to so distribute it, and returned the same check to Admiral Porter. The Admiral then deposited the check with the assistant treasurer at Saint Louis, on whom it was drawn.

In July, 1874, proceedings were begun in the district court of the United States in the District of Columbia, for the purpose of making such a distribution of said money among the officers and crew of the Mississippi squadron. These proceedings were instituted through
26 Admiral Porter, who placed in the custody of the court his check upon the assistant treasurer at Saint Louis in favor of the assistant treasurer at Washington for the amount so deposited by him.

The district court of the District of Columbia took jurisdiction in admiralty of the res thus placed in its custody, in a suit entitled "The United States vs. $59,413.42, prize-money of the Mississippi squadron, deposited with assistant treasurer, by order of the Secretary of the Navy, by Rear-Admiral David D. Porter, commanding Mississippi squadron." It made three decrees on the 13th July, 1864.

By the first, it ordered the marshal to deposit the check with the assistant treasurer at Washington, and that the money therein described should remain subject to the order of the court.

By the second, it recited that the money had been decreed to Admiral Porter, as informer, by the district court in Illinois, that the Admiral declined to receive it as informer, and desired it to be distributed as prize-money, and that it was subject to the payment of a certain amount of costs and disbursements; and it decreed that the residue, after payment of such costs and disbursements, should be distributed among the public vessels of the United States named in the decree.

By the third, it ordered the payment of said costs and disbursements, and that the residue of said money should be paid into the Treasury of the United States, to be distributed according to the terms of the decree passed by the court.

If these proceedings are to be regarded as ancillary to the proceedings in Illinois for the purpose of correcting an assumed error of that court in failing to make a distribution of prize-money, they are void, not only because the court in Illinois itself would have been powerless to correct the supposed error after the expiration of the term in which the decree was rendered,* and because the original judgment to which it purported to be ancillary was itself void; but also because the Illinois suit was not in prize, but for the confiscation of enemies' property. A suit for confiscation is an action of an entirely different nature from a proceeding in prize. Confiscation is the act of the sovereign against a rebellious subject. Condemnation as prize is the act of a belligerent against another belligerent. Confiscation may be effected by such means, either summary or arbitrary, as the sovereign, expressing its will through lawful channels, may please to adopt. Condemnation as prize can only be made in accordance with principles of law recognized in the common jurisprudence of the world. Both are proceedings in rem, but

*The Lizzie Weston, Blatchford's Prize Cases, 265, and authorities there cited.

confiscation recognizes the title of the original owner to the property which is to be forfeited, while in prize the tenure of the property seized is qualified, provisional, and destitute of absolute ownership.* To confiscate property seized upon land, resort must be had to the common-law side of the court.† Prize proceedings are always in admiralty.

If, on the other hand, they are to be regarded as independent proceedings, there must be statute authority to support them. Consent of parties will not confer on a district court a jurisdiction not given by statute;‡ especially where the rights of other parties are affected. The rights of the United States were involved by the decree of the district court of the District of Columbia, as well as the rights of the claimants and of other owners of cotton condemned in Illinois. No one could acquire an interest in a prize except by the grant or permission of the
27 United States;§ or could take such right except in the manner authorized by law. The only authority found at that time for prize proceedings was contained in the act of July 17, 1862, for the better government of the Navy;‖ and in the act of March 3, 1863, to regulate proceedings in prize cases.¶

By the second section of the act for the better government of the Navy the United States granted to the officers and men in their Navy, who should make maritime captures, a share in such as might be condemned as prize.

By the eleventh section of the act they directed that their own share in prizes should constitute a fund for the payment of naval pensions.

By the twelfth section, they directed the court which should have the custody of the res, or its proceeds, when final condemnation should be made, to deposit the gross proceeds of the sale with the assistant treasurer of the United States at or nearest the place where the sale should be made; and by the act of March 3, 1863, they made that deposit subject to the order of the court, which was authorized to make payments and disbursements from it; and they further authorized the court to make final distribution of the residue, after payment of the disbursements allowed by law, and required it to order such residue to be paid into the Treasury of the United States for distribution there according to the decree.

We are of opinion that no court is empowered to decree this final distribution except the court which first acquires jurisdiction over the res, or its representative proceeds. We therefore think that the whole proceedings in Washington were not only void in themselves, but void on their face, so as to afford no protection even to an innocent depositary, without hire, paying out money on the face of them to a party not entitled to receive it.

The defendants, however, are not in the position of an innocent depositary without hire. Their agent carried away the claimant's property, and they have undertaken that so much of its proceeds as the claimant can trace into the Treasury shall be repaid to him.** The suit which they authorize him to bring for the proceeds resembles the common-law action of indebitatus assumpsit—a liberal equitable action, which lies whenever a defendant becomes possessed of a plaintiff's money, or of his property and converts it into money, and in the absence of some

* The Peterhoff, Blatchford's Prize Cases, 620.
† The Confiscation Cases, 20 Wall., 110.
‡ Railway Company v. Ramsay, 22 Wall., 322.
§ The Siren, 13 Wall., 393. ‖ 12 St. at L., 600; Alexander's case, 2 Wall., 422.
¶ 12 St. at L., 759.
** Haycroft's case, 22 Wall., 81.

controlling rule of public policy or law, cannot retain it with good conscience, or without violating the rules of natural justice and equity. We must treat the government in such a suit precisely as a private person would be treated as defendant by a common-law court having jurisdiction of similar controversies between private parties.

The ministerial officer who pays the money under such a judgment may or may not be protected in the absence of fraud as against the government; we are not called upon to decide that question. But the payment does not protect the government itself against the statutory obligation which it assumed to pay to an owner of captured property, no party to the judgment record, so much of the proceeds of his property as reached the Treasury.

It is further contended that this half of the proceeds of the claimant's cotton lost its identity before the money which is claimed to be identical with it came into the Treasury. We do not think so. It was certainly paid to Captain Pennock; as certainly he paid it to Admiral Porter. From Admiral Porter it went to Secretary Welles; from Secre-
28 tary Welles back again to Admiral Porter. By Admiral Porter it was made the subject of litigation in Washington and deposited with the court there. By the court it was ordered paid into the Treasury. In obedience to that order it was so paid. Every link in the chain is clear as sunshine at noonday.

In our opinion the claimant has established everything which the law requires him to establish in order to be entitled to recover both the moiety of his cotton, amounting to $12,680.20, which was paid into the Treasury by order of the district court for the southern district of Illinois, and so much of the other moiety, amounting to $12,426.60, as was paid into the Treasury by order of the district court of the District of Columbia, making in all $25,106.80.

Judgment will be entered accordingly.

VI. *Dissenting opinions.*

RICHARDSON, J., dissenting:

I concur with all my associates in holding that the claimant is entitled to recover the $12,680.20 paid into the Treasury by the marshal from the proceeds of his cotton captured in rebel territory, and after the passage of the act of March 12, 1863, brought into a loyal State, and in possession of an officer of the Navy, without having been libeled previously thereto for forfeiture under the provisions of the act of July 13, 1861, § 5 (12 Stat., 257), nor seized by order of the President at any time under the provisions of the act of July 17, 1862, §§ 5, 6, 7 (12 Stat., 590), so much having reached the Treasury as the proceeds of captured cotton, and being still held by the defendants for the loyal owner, but I am constrained to differ from the majority in giving judgment for that which did not so come into their control, and which is not now in their Treasury.

The difficulty with this branch of the claimant's case is that the money decreed to be paid to Captain Pennock lost its identity, was covered into the Treasury as prize-money belonging to the captors upon an order issued by a court of competent jurisdiction in admiralty, was so entered in the books of the department, was known to the defendants only as such prize-money, and was paid out, as it was received, under the same order of the same court, acting under the statutes then in force for the distribution of prize-money, in pursuance of a permanent appropriation made by law, and without notice of the present claim.

It cannot be doubted that the decree of the district court in Illinois, ordering one half of the proceeds of the cotton condemned to be paid to Captain Pennock, as informer, was irregular and not warranted by law. Nevertheless, the decree was obeyed and acted upon, and the money, with other money decreed in like manner in other cases, to the amount, in all, of $59,943.42, was paid to Captain Pennock by the marshal by his check therefor on an assistant treasurer, not on the Treasurer, for the money had not reached the Treasury, and was not subject to the constitutional provision that "no money shall be drawn from the Treasury but in consequence of appropriations made by law,' but was subject to the order of the court. Captain Pennock, while he did not accept the same for his own use, did receive it and hand it to Admiral Porter, whom he regarded as the real informer. And Admiral Porter, when he, too, declined to appropriate it to his own use, did accept it for the officers and men of his squadron. He deposited it in his own name, and subsequently drew his own check for the amount against the same deposit, and voluntarily surrendered this, his own check, into the control of the district court of the District of Columbia, a court having full admiralty jurisdiction, for distribution as captors' prize-money. The check was indorsed "Prize-money of Mississippi squadron, deposited with assistant treasurer by order of the Secretary of the Navy by Rear-Admiral David D. Porter, commanding Mississippi Squadron."

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Thus the proceeds of the claimant's cotton, to that extent, lost its identity as against all persons except those having actual notice. Without the restricted indorsement Admiral Porter might have passed this check to anybody for value received without subjecting the receiver to liability on account of the manner in which the Admiral obtained the money on deposit against which it was drawn, and that indorsement only stamped it with notice that it was prize money.

By the act of March 3, 1863, chap. 91, § 3 (now Revised Statutes of District of Columbia, § 762), it was provided with reference to justices of the supreme court of the District of Columbia, that "any of said justices may hold a district court of the United States for the District of Columbia, in the same manner and with the same powers and jurisdiction possessed and exercised by other district courts of the United States." This gave to that court jurisdiction "of all causes of admiralty and maritime jurisdiction * * and of all seizures on land and on waters not within admiralty jurisdiction * * and original and exclusive cognizance of all prize brought into the United States except" property used, &c., in aid of insurrection, as set forth in the several acts now incorporated into Rev. Stats., § 563, par. 8; § 629, par. 6; §§ 5308, 5309.

The act of June 30, 1864, ch. 174, § 16 (now Revised Statutes, § 4641), provided in relation to prize, "that the net amount decreed for distribution to the United States, or to vessels in the Navy, shall be ordered by the court to be paid into the Treasury of the United States, to be distributed according to the decree of the court. And the Treasury Department shall credit the Navy Department with each amount received, to be distributed to vessels of the Navy; and the persons entitled to share therein shall be severally credited in their accounts with the Navy Department with the amounts to which they are respectively entitled."

It is only with the orders of courts made under this provision that the Treasury Department has any concern. If money comes through a court of such general jurisdiction, declaring it to be prize money, and ordering its payment into the Treasury, and its distribution among the vessels of the Navy named in its decree, the officers of the Treasury are

bound to respect it, and it is no part of their official duty to inquire into the sources from which the money may have been derived, nor to determine whether or not the court has erred in its judgment in holding it to be lawful prize-money, nor to inspect all the records to ascertain whether or not the court may not have committed errors in the forms of proceeding, or even made a mistake in taking jurisdiction at all. They are not to sit in review of the proceedings of a Federal court whose order comes to them in relation to a subject-matter over which it has general jurisdiction.

And especially is it their duty to respect such a decree in whole if at all. If they accept the money according to the terms of the decree as prize-money belonging to the captors, and cover it into the Treasury as such, it becomes, to all intents and purposes, prize-money, subject to the permanent appropriation made for the payment thereof to the captors on the decree of court, by the statutes now incorporated into Revised Statutes, § 3689, second edition, p. 728, and § 4641. It has then certainly, if not before, lost its identity as any other money, or as belonging to any other persons; more strongly so when, as in this case, no knowledge or notice comes to them, or to the defendants, in any form whatever, that there are other claimants thereto, until a long time after it has been paid out as it was received under the decree of court and in pursuance of an appropriation made by law.

This money was deposited with the assistant treasurer at Washington, under the first order of court, as prize-money, to "remain in the hands of said assistant treasurer, subject to the further order of this court"; and it may be noted here that the assistant treasurer at Washington never receives on deposit any money other than prize-money deposited under the provisions of law, now Revised Statutes, § 4629; all other public money, or money in control of the Federal courts, in Washington, being deposited with the Treasury. Subsequently the further order of court was to pay it into the Treasury and distribute it according to the decree which is set forth, and which named the vessels which were to share therein and the amounts to each, and the statute (Revised Statutes, § 4641) provided how that should be done, and it was done accordingly. The money was thus received with a condition annexed thereto; it could have been received in no other way, and if the defendants' officers so received it, they were bound so to distribute it, and their acts in pursuance thereof are binding on all parties concerned.

The chief justice of the supreme court of the District of Columbia, holding a district court, seems to have decreed a distribution of the money as by consent of the only party having control of the same. He appears to have proceeded upon the ground that the court, having general jurisdiction of all cases of prize and forfeiture, might by common consent waive the forms required in adverse proceedings, when Admiral Porter was willing to dedicate as prize-money, for the benefit of the officers and men of his squadron, money which he had on deposit in his own name, and no doubt then believed by all parties to be his own property, rightly and legally required, and this too without conflicting with that general principle of law that courts cannot acquire jurisdiction by consent of parties. Whether or not that view was correct is immaterial in this case.

Conceding that the proceedings in the district court of the District of Columbia, by recitals therein contained, carried with them notice to the Treasury officials that the decree was extrajudicial, and that the money

was erroneously held and decreed to be prize-money, still there was nothing therein to give them notice that it was the proceeds of captured and abandoned property, since the act of March 12, 1863, in terms provided for the payment into the Treasury of such money only through Treasury agents, and did not put those officials on their guard to look for it in the decrees of prize courts. On the contrary, the notice to them was no more than that Admiral Porter, in his generosity and magnanimity, voluntarily contributed to the fund deposited for the benefit of captors his own money, duly and legally awarded to him as informer. But whatever the notice was or might have been, if the Treasury officers had looked into the proceedings thoroughly, I am not prepared to hold that the United States are chargeable with such notice so laid before public officers whose duties are prescribed and limited by law, and in the absence of any statute provision on the subject of notice applicable to such a case.

It is true that now, in this court, by means of witnesses and the efforts of the Attorney-General's office, the money is traced through the various changes to which it was subjected, into and out of the public Treasury, and no doubt, with more witnesses and more litigation, it might be further traced, even beyond the hands of the hundreds of officers and men of the Navy to whom it was distributed. But when received and
31 paid out by the Treasury officials no witnesses were or could have been called and sworn, no adverse claimants or counsel appeared to press their views, and the money had no ear-marks penetrating through the several veils which obscured its origin. It was then and not afterwards, by the dim light of that day and not by the noonday sun of this, that the rights and liabilities of the parties became fixed.

It is a matter of familiar history that large amounts of money were paid in and out of the Treasury as prize money to captors and as shares to informers, upon the decrees of Federal courts, and if the defendants are to be held liable for all the errors of those courts in the proceedings upon which the decrees were founded, and made to pay over again money which they have paid out upon the same decree as that by which they received it, without notice of any adverse claim thereto, simply because the owners of captured and abandoned property are able to trace into the mass of money so received and paid out the proceeds of their property, a liability will be established which, it seems to me, was not contemplated by Congress in passing the captured or abandoned property act, is not within the reasonable construction, as it certainly is not within the language of that act, and which would be fraught with peril to the due administration of the Treasury Department.

The captured and abandoned property act was an act of grace and favor, passed in sympathy for the loyal people in rebellious States, who, being inhabitants of rebel territory, were, in law, rebel enemies. The government might have confiscated all their property, or, by the more rigorous rules of warfare, might have seized and held it all as booty. Congress relaxed the harsher laws, and undertook to make the government a trustee for the residue of the proceeds of their property, captured or abandoned, which reached the Treasury in the manner provided by that act, to which they could establish their right. This threw upon the claimants all losses by the accidents to which the property and the proceedings might be subject, and gave to them only the right to recover such money as the United States might actually receive and hold as trustees. The records of this court furnish abundant evidence that large quantities of property captured and seized by officers of the United States

were so disposed of that the money never reached the Treasury, and yet the defendants are not held liable therefor. (Ross vs. The United States, 92 U. S. R., 281.) And I am unable to see how they can be held liable when, as in this case, the loss occurred through the decree of the district court in Illinois, taking part of the proceeds, turning it into another channel, where it lost its identity and came into the Treasury under another name, was credited to another fund, and was paid out as received, without notice of any other claim thereto.

A case under the captured or abandoned property act is very much like an action of assumpsit for money had and received, in which, when maintainable, the defendant is frequently said by the courts to be trustee of the money for the plaintiff, precisely as the Supreme Court has often called the United States trustees of the proceeds of captured and abandoned property for the loyal owners. And we are sure that no adjudicated case can be found in which it has been held that such an action could be maintained against one who, having received money on deposit from another as his own property, has paid it out as he received it, to the same party, or on his order, without notice of any adverse claimant thereto, simply upon proof that the depositor wrongfully obtained the same from the plaintiff.

In Town of Verona vs. Peckham et al. (66 Barb., 103), it is laid down, in language quite applicable to the present case, that although
32 money may have passed into the hands of an individual in a way not authorized by law, yet if it is given him to be applied to a specific purpose, and he has so applied it, he cannot, in equity and good conscience, be called upon to refund it.

I may add as to the amendment of the district attorney to the libel in the district court of Illinois striking out the first allegation therein, my opinion is that he intended, and the effect of the amendment was, to strike out what may be called the first count therein, the allegation that "the said cotton was purchased in a district or part of a district, or part of the United States, which before said purchase had been declared to be under insurrectionary control by the President of the United States, and was proceeding from said district or part of the United States to another district or part of the United States which had not been so declared to be under insurrectionary control, contrary to the act of July 13, 1861, and the proclamation of the President of August 16, 1861," leaving the libel to stand and the judgment to be founded on the second count; the allegation added at the time of filing the libel, that "the said property belongs to a person now in armed rebellion against the Government of the United States," under the act of July 17, 1862 (12 St., 590). It is with this view that I concur with my associates in holding that the claimant is entitled to judgment for $12,680.20.

NOTT, J., dissenting:

I agree with the opinion of the court as to the construction given to the abandoned and captured property and the confiscation acts, and as to the right of the claimant to recover the proceeds of his property now in the Treasury, and with the opinion of Mr. Justice Richardson as to the merits of this particular case; but I am also of the opinion that the court is without jurisdiction to hear and determine a suit under the statute for a fund which is neither actually nor constructively in the Treasury, and this for the following reasons:

1. The suit is not of the nature of an action of indebitatus assumpsit, nor of any action at law. The position of the government under the

abandoned or captured property act (12 Stat. L., p. 820) is that of a trustee in equity irresponsible for the acts of his agents who assist him in administering the trust. The cause of action is ex mera gratia; no consideration passed to the government; the property was not taken for public use; the custody of the property after capture was for the benefit of the owner; no implied contract arises from the transaction; no personal guarantee against losses can be predicated against the trustee either from the terms of the statute or the nature of the trust. Wylie's case (6 C. Cls. R., 295); Cone's case (8 id., 329); Bynam's case (8 id., 440); Thomas's motion (12 id., 273); Haycroft's case (22 Wallace R., 81).

II. The judgment to be rendered for this diverted trust-fund must be satisfied either out of the captured property fund remaining in the Treasury or out of moneys appropriated by Congress for the ordinary judgments of the court springing out of the obligations of the United States as contractors.

As to the former:

By the decision of the Supreme Court in Klein's case (7 C. Cls. R., 240) it was settled that "under the abandoned or captured property act" "the government constituted itself the trustee for those who were by that act declared entitled to the proceeds of captured and abandoned property, and for those whom it should thereafter recognize as entitled"; that "the title to the proceeds of the property which came to the possession of the government by capture" "was in no case
33 divested out of the original owner," except such as was used for carrying on war; and that it remains with the government itself to determine whether proceeds still in the Treasury shall be restored to the outstanding owners or not. Such being the status of the fund, it would be contrary to equity to take one man's money to pay another man's judgment; and the fact that the trustee still has somebody's money in its possession gives the court no power to decree payment of the claimant's losses out of trust-money belonging in equity to other persons not before the court.

As to the latter:

In the absence of legislation assuming such losses, and in the absence of a contract express or implied imposing an obligation upon the government, the court is without jurisdiction to render a judgment which will hold the government to a personal responsibility in the matter, and make it respond in damages payable out of moneys derived from taxation, and appropriated for the payment of its legal debts.

III. The distinction between this case and Brown's (6 C. Cls. R., 171) and O'Grady's (10 id., 134) is that there the government withheld moneys which had been decreed to be the claimants', and by so doing became liable on an implied contract as for moneys withheld and applied to its own uses and purposes; while here the diverted fund was applied to no use or purpose of the government, but was paid away through a mistake of an officer for whose errors the government as trustee reaped no benefit, actual or constructive, had given no guarantee, and assumed no liability.

The distinction between this case and Sevier's (7 C. Cls. R., 387) is that there the decision comes before that of the Supreme Court in Klein's case, and consequently rested upon what we must now regard as a false premise, viz, that the property in all cotton passed absolutely by capture to the government, with an equitable reservation in the nature of a compact in favor of those few persons who, adhering to the compact, never gave aid or comfort in fact to the rebellion. Upon that premise, it was properly held that the government, not being trustee for all own-

ers, could not evade the obligations of its compact to pay a loyal claimant the proceeds of his property by setting up the mistakes or negligences of its law officers.

34 VII. *Final judgment.*

At a Court of Claims held at the Capitol in the city of Washington, on the third day of February, A. D. 1879, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Josiah Winchester, executor of John C. Jenkins, deceased, do have and recover of and from the United States the sum of twenty-five thousand one hundred and six dollars and eighty cents ($\$25{,}106\frac{80}{100}$).

35 VIII. *Application for appeal and order allowing same.*

From the judgment rendered in the above-entitled cause on February 3d, 1879, in favor of claimant, the defendants, by their Attorney-General, on the 5th day of March, 1879, make application for, and give notice of, an appeal to the Supreme Court of the United States.

THOMAS SIMONS
Assistant Attorney-General.

Filed March 5, 1879.

And now, to wit, this fifth day of March, 1879, it is ordered that the appeal be allowed as prayed for.

36 In the Court of Claims.

JOSIAH WINCHESTER, EXECUTOR OF JOHN C. Jenkins, dec'd, *vs.* THE UNITED STATES. } No. 3552.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the opinion of the court, and of the dissenting opinions, of the final judgment of the court, of the application by the defendants for the allowance of an appeal to the Supreme Court of the United States, and of the order allowing same.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this thirteenth day of March, 1879.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 1098. The United States, appellant, vs. Josiah Winchester, ex'or of John C. Jenkins, dec'd. Court of Claims. Filed 13th March, 1879.

In the Supreme Court of the United States.

OCTOBER TERM, 1878.

THE UNITED STATES, APPELLANTS,
vs.
JOSIAH WINCHESTER, EXECUTOR, &C. } No. 1098.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1878.

THE UNITED STATES, APPELLANTS,
vs.
JOSIAH WINCHESTER, EXECUTOR, &C. } No. 1098.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The claimant is sole surviving executor of the will of John C. Jenkins, late of Adams County, in the State of Mississippi, duly approved and allowed in the probate court of said county, upon which letters testamentary were issued October 23, 1855, the said Jenkins having died before that date, leaving a plantation owned by him in the county of Wilkinson, in said State, with directions in said will for the cultivation of the same by the representatives of his estate for the benefit of his children. (Record, 3.)

On the 18th day of February, 1863, there was on the plantation, belonging to the estate of said deceased, and raised thereon, according to the provisions of the will,

a quantity of cotton, of which 168 bales were captured by the naval forces of the United States under command of Admiral Porter, and the following receipt given therefor:

"U. S. St'r Era No. 5, Wilkinson Co., Miss.,
"*Plantation J. C. Jenkins' heirs, Feb.* 18, 1863.

"Seized by the order of Col. Charles Rivers Ellet, com'd'g Miss. River ram fleet, one hundred and sixty-eight bales of cotton, for the use of the United States Government, belonging to the heirs of the estate of J. C. Jenkins, dec'd.

"ASGILL CONNER,
"*Capt. Co. K,* 18*th Ill's Volunteers.*"

The cotton, so captured and seized, was taken on board of a government steamer, the New Era No. 5, to Johnson's Landing, where it was unladen and hauled to Milliken's Bend, on the Mississippi River, and there, with other cotton, making a lot of 258 bales and one bag, was shipped on board of the steamer Rowena, about the last of March or first of April, 1863, and sent to Cairo, Ill., by order of Admiral Porter, to be turned over to the marshal of that district, as set forth in Captain Pennock's information. The cotton arrived at Cairo April 7, was received there April 8 by Capt. A. M. Pennock of the Navy, commandant of the naval station at that place, acting under Admiral Porter, and by said Pennock turned over to the United States marshal April 9, 1863. (Record, 3.)

Thereafter proceedings were had respecting said cotton, which, briefly stated, are these (Record, 4–14):

On information by Captain Pennock, U. S. N., addressed to the United States attorney for the southern

district of Illinois, against 258 bales and 1 bag of cotton, seized as prize cotton by Admiral Porter, the whole being the property of rebels, a libel of information was filed on April 17, 1863, by the United States attorney, in the district court, southern district of Illinois, against the cotton, and he asked a process and monition against it, and that it be condemned and sold; charging, first, violations of the non-intercourse act of July 13, 1861; and, second, that the cotton belonged to a person then in armed rebellion against the Government of the United States. The marshal, in accordance with the terms of the warrant and monition, attached the cotton and subsequently sold the same. It was adjudged and decreed by the court that the default of all persons interested in the cotton be entered, and that the allegations of the libel be taken as true against the property, and the same be condemned as forfeited to the United States.

It is said by the Court of Claims that this record of proceedings is "loose and defective, but no more so than those which were sustained in the Confiscation Cases," found in 20 Wallace, 92. It is unnecessary, therefore, to engage in a discussion as to the sufficiency of the proceedings generally to warrant the decree of condemnation and judgment of forfeiture.

The cotton thus finally condemned as forfeited was the claimant's cotton, captured and seized as set forth in the second finding; and all the money decreed to be paid over, one-half to the United States Treasury and the other half to Capt. A. M. Pennock as informer, was the proceeds of his said cotton.

Said sum of $12,680.20, decreed to be paid into the

Treasury, was so paid by the United States marshal. (Record, 14.)

The balance, a like amount, decreed to be paid to Captain Pennock as informer, was included with other money received and decreed in like manner by said court in other cases, making in all $59,943.42, and a check therefor drawn by the marshal on the assistant treasurer at Saint Louis, with whom the proceeds of cotton libeled in said court had been deposited, was given to said Pennock, who handed the same to Admiral Porter as the real informer. Admiral Porter declined to accept the same as informer, but received the check and forwarded it to the Secretary of the Navy for distribution among the officers and crews of his squadron as captors. Subsequently it was deposited by said Porter, by order of the Secretary of the Navy, with said assistant treasurer at Saint Louis, and said Porter's check therefor was given into the control of the district court of the United States for the District of Columbia by said Porter, and proceedings were had thereon as follows (Record, 14–18):

A communication, addressed by the United States attorney, District of Columbia, to the judge United States district court for the District of Columbia, setting forth the refusal of Admiral Porter to receive the money as informer, and requests the court to distribute the sum of money specified among the officers and crews of vessels making the captures of the property sold, as before recited:

"It is ordered by the court, in admiralty sitting, this thirteenth day of July, A. D. 1864, that the check accompanying the petition of Rear-Admiral David D. Porter, and signed by the said Porter, for the sum of $59,943.42, and endorsed as follows: 'Prize money of Mississippi

squadron, deposited with assistant treasurer by order of the Secretary of the Navy, by Rear-Admiral David D. Porter, commanding Mississippi squadron,' be deposited by the marshal with the assistant treasurer at Washington, and that the money therein described, being the sum of $59,943.42, remain in the hands of the said assistant treasurer, subject to the further order of this court.

"By order of the court.

"D. K. CARTTER,
"*Chief Justice.*"

"It appearing to the court that there is the sum of fifty-nine thousand nine hundred and forty-three dollars and forty-two cents deposited with the assistant U. S. treasurer at S't Louis, Missouri, subject to the order of the assistant U. S. treasurer at Washington, and that the said amount was decreed to Rear-Admiral David D. Porter, as informer, by decree passed by the United States district court for the southern district of Illinois in certain cases there adjudicated;

"And it further appearing to the court that the said Rear-Admiral David D. Porter declines to receive the said sum of money, or any part thereof, as informer, and desires that the same be distributed as prize money among the officers and crews of the vessels making the captures of the property condemned by the decrees of the court, hereinbefore referred to;

"And it further appearing to the court that the said Rear-Admiral David D. Porter regards the following-named vessels as entitled to share in the distribution of the said fund, and that by agreement, consent, and understanding by and between the said Rear-Admiral

David D. Porter and the officers and crews of the vessels hereinafter to be named, the vessels hereinafter named are entitled to the proportion of the said sum of $59,943.42 hereinafter stated;

"And it further appearing that the aggregate sum of the costs and disbursements herein, as by the adjustment on file in the office of the clerk will appear, is eleven hundred and ninety-eight dollars and eighty-six cents, and that the net amount for distribution on the basis of the said adjustment is fifty-eight thousand seven hundred and forty-four dollars and fifty-six cents:

"It is now ordered and decreed, on the motion of the district attorney, the counsel for the captors being present in open court and assenting to the same, that the aforesaid net amount be distributed among the following-named public vessels of the United States, as follows":

(Here follows the vessels and amounts.)

In pursuance of the orders of the district court of the District of Columbia said money was deposited with the assistant treasurer at Washington, and the final balance, $58,744.56, was covered into the Treasury "on account of money received for prize-money belonging to the Mississippi squadron," "to go to the credit of the captors"; and thereafter said money was paid out of the Treasury in accordance with the terms of the decree of said court.

On the 28th of August, 1862, the Secretary of the Navy issued the following order:

"NAVY DEPARTMENT, *August* 28, 1862.

"The attention of naval officers is called to the regulations of the Secretary of the Treasury concerning commercial intercourse with insurrectionary States or sections, dated August 28, 1862.

"I. Commanders of naval vessels will render such aid as may be necessary in carrying out the provisions of said regulations, and enforcing observance thereof to the extent directed by the Secretary of the Treasury, so far as can possibly be done without danger to the operations or safety of their respective commands.

"II. There will be no interference with trade in or shipments of cotton or other merchandise conducted in pursuance of said regulations within any of the waters controlled by the naval forces of the United States unless absolutely necessary to the successful execution of military or naval plans or movements. But in cases of the violation of the conditions of any clearance or permit granted under said regulations, and in cases of unlawful traffic, the guilty party or parties will be arrested and the facts promptly reported.

"III. No officer of the Navy will seize cotton or other property of individuals within the territory opened to traffic and subject to the regulations of the Secretary of the Treasury, unless the same is exposed to destruction by the enemy, or needed for naval purposes, or for confiscation under the act of Congress; and in all such cases the fact, with all attendant circumstances, shall be promptly reported to the department.

"GIDEON WELLES,
"*Secretary.*"

(Record, 18.)

The following correspondence took place between Admiral Porter and the Secretary of the Navy (Record, 21):

"U. S. FLAG-SHIP BLACK HAWK,
"*March* 7, 1863.

"SIR: In the last twenty days I have sent to Cairo 388 bales of captured cotton, valued at one hundred and

thirty-nine thousand dollars, and have on hand from the New Era, No. 5, and other sources, two hundred and fifty-nine (259) bales, valued at ninety-one thousand dollars; two hundred and thirty thousand dollars in all. This cotton has been turned over to the marshal at Cairo. In the Army, all cotton seized is sent to Memphis and sold by the quartermaster for the use of the Army. If our paymaster at Cairo had the authority to sell the cotton, much of which has no ownership, he could easily keep the fleet supplied with funds.

"Very respectfully,

"DAVID D. PORTER,

"*Act'g Rear-Admiral, Comm'g Miss. Squadron.*

"Hon. GIDEON WELLES,

"*Secretary of Navy, Washington.*"

"NAVY DEPARTMENT, *March* 28, 1863.

"SIR: In reply to your letter of the 7th inst., you are informed that all property captured as 'prize property' must be sent to a prize court for adjudication, and be disposed of as the court may decree.

"The disposition of captured 'abandoned property' is provided for by the recent act of Congress, approved March 12, 1863.

"Very respectfully,

"GIDEON WELLES,

"*Secretary of the Navy.*

"DAVID D. PORTER,

"*Act. Rear-Admiral,*

Commanding Miss. Squadron, Cairo, Ills."

ASSIGNMENT OF ERRORS.

1. The court erred in rendering judgment for $12,680.20 in favor of the claimant.

2. The court erred in rendering judgment for $12,426.60 in favor of the claimant.

3. The court erred in rendering judgment for $25,106.80 in favor of the claimant.

ARGUMENT.

I.

The position of the United States is that the averments in the record of proceedings of the United States district court, southern district of Illinois, cannot be questioned in the Court of Claims; that by the judgment and decree of condemnation standing unreversed by appeal the charges or causes of condemnation alleged are in all respects found to be true and not open to further controversy in any Federal court. These are two, separate and distinct: 1st, for violation of act July 13, 1861; 2d, for confiscation under act July 17, 1862. Each of these could exist at the same time against the same property, and both are charged. To warrant the judgment of the Court of Claims it should appear that the defect of jurisdiction alleged applies to the non-intercourse charge as well as that for confiscation. It is no answer to say that that court now, sixteen years after the judgment, has investigated the matter and is satisfied that the claimant's cotton was not justly chargeable on either of the grounds alleged. That issue was forever closed by the judgment not contested or appealed from, and is no more to be disturbed as to the facts so concluded than a judgment of the Supreme Court on a point of law.

It is not understood that the Court of Claims denies this. That court appears, however, to assume that as against this cotton there is but one cause of condemnation set up, and that for confiscation only under act July 17, 1862. As to this, the court admits of course that the district court is invested with jurisdiction to condemn for that cause under that act and overrule all objections based on mere looseness of the pleadings and proceedings of record. The judgment seems to be rested on the single point that, unless the judgment-record of the district court in a suit for confiscation under said act shows an executive seizure of the property condemned before the court assumed jurisdiction over it the record will not sustain the judgment, and the Court of Claims will declare the proceedings to have been without jurisdiction.

As before observed, the assumed validity of this position does not dispose of the judgment in this case, which rests equally on a ground of forfeiture under another act of Congress, as to which it is not, and we presume cannot be, shown that the alleged defect in the judgment-record is in any way material.

But, supposing the libel contains only a confiscation charge—

1st. By what statutory or other authority does the Court of Claims declare the judgment in question of the United States district court in Illinois to be without jurisdiction? The necessity of a prior seizure by executive order and the incorporation of it into the record in some form were questions affecting the jurisdiction of the court open, to contention before it, and how does the Court of Claims know that they were not *res judicata* in the court or even in the very suit? The rulings of the court thereon were chargeable with error

and appealable by statute law to the circiut and Supreme Courts of the United States. This very claimant, whose property was seized and condemned, had his day in court and the opportunity to test the jurisdiction in the method provided by law. Instead of doing so, he brings suit in the Court of Claims and brings the record of judgment of the district court of Illinois before that court to be in effect reversed and annulled and to have the proceeds declared by the Illinois court to be the property of the United States, and which have been 16 years in the Treasury, awarded to him. If this can be done in this case it can be done in every other case in which the status of the *res* in like actions has been adjudicated in the courts in which that power has been vested by statute, and all such decisions are unsettled and made subject to the revision of a court to which no such virtually appellate power was, as we believe, ever intended to be given. With great respect to the court we think such a result calls for very careful examination before its final decision.

There can be little question but that the United States district court of Illinois had general jurisdiction of an action *in rem* under the confiscation act, that is, of the subject-matter of the suit, decided in that court, or of the *res*. If this is admitted, the objection should have applied to the pleadings and forms of procedure rather than to the jurisdiction of the court. Where this court has inquired into the jurisdiction of the inferior courts in cases where the question was raised collaterally and decided against such jurisdiction, it was because it appeared either in the record, or from proof outside of the record, that the inferior courts had no jurisdiction or control of the subject-matter of the suits.

The first inquiry should be addressed to the sufficiency

of the record of proceedings of the United States district court, southern district of Illinois. The pleadings generally and the action of the court in the case are possibly not in strict conformity with established forms of procedure, yet the substance and all the requisites of a common-law proceeding are found in the record. Technical niceties are not required either in admiralty or revenue cases. This is the language of the court in the confiscation cases (20 Wall., 92, 110), and it is safe to say that the record of proceedings there determined to be sufficient was not less defective than that of the United States court in Illinois, now before the court collaterally.

The objection, however, is made that because the record of the Illinois court does not show that the seizure was authorized by an executive order, therefore, under the confiscation act of July 17, 1862, that court could not have taken jurisdiction. The rule laid down by the Supreme Court in the case of Williamson *vs.* Berry (8 How. R., 540) is applied to the present case. The court there said: "The jurisdiction of any court exercising authority over a subject may be inquired into in every other court when the proceedings in the former are relied upon and brought before the latter by a party claiming the benefit of such proceedings."

But in this and all other cases, where this court has laid down the rule as above quoted, the right to inquire into the jurisdiction of a court or to attack a judgment collaterally has been limited to foreign judgments.

In Thompson *vs.* Whitman, 18 Wall., 457, the court says: "The records of the domestic courts of England and some of the States, it is true, are held to import absolute verity as well in relation to jurisdictional as to other facts in all collateral proceedings. Public policy

and the dignity of the courts are supposed to require that no averment shall be admitted to contradict the record. But, as we have seen, that rule has no extra-territorial force."

In Knowles *vs.* Gaslight and Coke Co., 19 Wall., 19, the court clearly draws a distinction between a *domestic* and a *foreign* judgment.

The United States district court, southern district of Illinois, is the creature of the United States, the same sovereignty that created the Court of Claims, and the two courts with others comprise the judicial system of the United States, as distinguished from the system by and through which the different States dispense justice within their own territory.

A judgment of a United States district court in its relation to the Court of Claims is a domestic judgment. The Court of Claims, although sitting in Washington, has territorial jurisdiction coextensive with the country, including the State of Illinois. A citizen of that State having a claim against the United States is able to sue in that court, or a person claiming damages under a contract performed or broken in the State of Illinois can in that court bring suit.

It follows, from the well-settled doctrine of the court, that the Court of Claims cannot collaterally inquire into the jurisdiction of the United States district court, southern district of Illinois, or attack its judgment, which was a domestic and not a foreign one, nor will this court undertake to do so. The case of *ex parte* Smith, 94 U. S., 456, is not in point, because there the record of the district court was directly before the Supreme Court on motion for a *mandamus*, whereas here the record of the United States district court, southern district of Illi-

nois, is before the court collaterally, and a different principle of law is made applicable.

The language of Williamson *vs.* Berry, quoted *supra*, is, at the best, general, and can scarcely be so broadly applied as it has been by the Court of Claims, even if that court has the right to attack the jurisdiction of the Illinois court. The presumption in favor of the jurisdiction of a court is always with the court assuming it; or, as it has been stated, all reasonable presumptions are indulged in support of judgments when collaterally attacked. So large are these presumptions, that they generally answer as an explanation for the absence of all matters in the record which are required to be taken before the judgment can be lawfully entered. As the presumptions are indulged to supply the absence of averments of the particular facts presumed, they cease to be received when the contrary of the particular supposed facts appears.

It is incumbent upon the party attacking the jurisdiction collaterally to show affirmatively the want of jurisdiction, and by the most positive proof. A presumption must be met by the clearest proof rebutting it, and it can hardly be pretended that the proof relied upon *aliunde* the record of the proceedings in Illinois to show the want of jurisdiction there, does affirmatively or positively have that effect. As the Illinois court assumed jurisdiction in the case, the presumption is that the seizure of the cotton was in accordance with an executive order, and that evidence of such order was before it.

An attempt is made to controvert this presumption by the production of an executive order from the Secretary of the Navy, of August, 1862, under which such a seizure could have been properly made, and of correspond-

ence between Admiral Porter and the Secretary of the Navy, consisting of a letter dated March 7, 1863, from Admiral Porter, informing the Secretary of the seizure of the cotton in controversy before the district court, and the reply of the Secretary of March 28, 1863, saying that prize property must be sent to a prize court for adjudication, and that the disposition of captured and abandoned property was provided for by the act of Congress of March 12, 1863.

It is contended that Admiral Porter had no authority to seize the cotton and send it to a United States district court for adjudication after the letter of March 28, 1863. But if the preliminary seizure was made under a prior executive order, and the property passed beyond the control of the seizing officer before a subsequent executive order apparently vacating the first is received, the subsequent order is ineffectual to prevent the full force and effect of prior acts being operative.

As the cotton was sent to Cairo, Ill., by order of Admiral Porter about the last of March or the first of April, 1863, the letter of the Secretary of the Navy of March 28, 1863, could not have reached Admiral Porter in time to change his action; and as the cotton was turned over to the United States marshal April 9, 1863, at Cairo, by Captain Pennock, of the United States Navy, it is evident that Admiral Porter could not have acted under the letter of March 28, 1863, before the cotton came into the possession of the United States marshal. This is asserted for the obvious reason that the letter sent from Washington March 28 could not have reached Admiral Porter on the Mississippi in time for him to revoke the orders to Captain Pennock as to the disposition of the cotton sent to Cairo.

II.

Then, again, it is proved *aliunde* the Illinois court record that the cotton was turned over to the United States marshal on April 9, 1863. Of course, as soon as it came into the possession of the United States marshal it must have been technically seized by him, as it could not have been held by him except under his authority to seize property of rebels.

The court can take judicial cognizance of the fact that general instructions on the subject of confiscation proceedings under the act of August 6, 1861, and July 17, 1862, were issued by the Attorney-General to district attorneys and marshals under date of the 8th of January, 1863. Prior to this the President had charged the Attorney-General with the superintendency and direction of all proceedings under these acts, and authorized him to give such instructions as he did. The instructions appear in the statement of case and opinion of court in Miller *vs.* United States (11 Wall., 268); Tyler *vs.* Defrees (*ibid.*, 331); and The Confiscation Cases (20 *ibid.*, 92).

These instructions would be an authority to the marshal to seize the property of rebels wherever found within his district.

These are the proofs outside of the record bearing on the question of the seizure of cotton. Instead, however, of establishing the proposition that the Illinois court had not jurisdiction, it would seem to strengthen the presumption of jurisdiction by bringing to the attention of this court the naval executive order of August, 1862, and the fact that the United States marshal of the southern district of Illinois had the custody of the cotton; that is, it is argued, had seized it under the general instructions of the Attorney-General on April 9, 1863, eight

days before the libel of information was filed by the United States attorney.

This court has ever shown a disposition to sustain the jurisdiction of the district courts under the confiscation acts, and has uniformly disregarded such objections made to the record and pleadings in the cases as are raised in the present case. In the case of Tyler *vs.* Defrees (11 Wall. R., 331–345), the court says:

"And we are further of opinion that where, the constitutionality of the confiscation acts being established, we are called upon to sit in review of the judicial proceedings of the inferior courts in the enforcement of these statutes, we are to be governed by the reasonable and sound rules applicable to analogous cases in the courts, and not by a system of procedure so captious, so narrow, so difficult to understand or to execute as to amount to a nullification of the statute."

But when this court is asked to declare that the district court of Illinois had not jurisdiction in the action against the cotton, it is called upon to be governed by a system of procedure "captious," "narrow," and "difficult to understand and execute."

As the district attorney filed his libel of information months subsequent to the date of the general instructions issuing from the Attorney-General, as a matter of fact he acted under those instructions, and the averment in the libel being that the property against which he prayed the usual process and monitions "belonged to a person now in armed rebellion against the Government of the United States," the record shows a seizure under an executive order as complete as appeared in the Confiscation Cases reported in 20 Wallace R. The district attorney is an officer acting under the Attorney-General, and all acts done by him, where general instructions

from the Attorney-General are proved, must of necessity be presumed to be under such instructions.

Again, it does not seem to have been decided that a prior seizure by executive order is a vital element of jurisdiction. It is urged that such seizure is not important.

If the court hold that the United States district court of Illinois had properly taken jurisdiction of the action against the cotton, the Court of Claims erred in assuming jurisdiction under the act of March 12, 1863—the abandoned and captured property act—and the court is asked to reverse the judgment of the Court of Claims with directions to dismiss the petition.

III.

If, however, the court finds that the presumption of jurisdiction in the United States district court of Illinois has been affirmatively controverted by proof outside the record of proceedings, it is then contended, first, that the United States district court, District of Columbia, had jurisdiction to distribute the sum of $12,426.60 among the officers and crews of certain vessels seizing the cotton; and, second, that the Court of Claims was without jurisdiction to hear and determine a suit under the act of March 12, 1863, for a fund which is neither actually nor constructively in the Treasury.

For the arguments to sustain these propositions the court is referred to the opinions of the learned judges of the Court of Claims who dissented on this branch of the case. (See dissenting opinions of Judges Richardson and Nott, Record, 29–35.)

CHARLES DEVENS,
Attorney-General.
JOS. K. McCAMMON.

IN THE

Supreme Court of the United States.

No. 1098.

UNITED STATES, APPELLANTS,

vs.

JOSIAH WINCHESTER, EXECUTOR OF JOHN C. JENKINS, DECEASED.

ARGUMENT FOR THE DEFENDANT, IN APPEAL,

BY

JOS. S. FOWLER, *Atty.*

JOHN POOL, *of Counsel.*

WM. H. MOORE, PRINTER, WASHINGTON.

IN THE

Supreme Court of the United States.

UNITED STATES, APPELLANTS,

vs.

JOSIAH WINCHESTER, EXECUTOR OF JOHN C. JENKINS, DECEASED.

No. 1098.

ARGUMENT FOR THE DEFENDANT, IN APPEAL.

I.

The Court at Springfield evidently understood and meant the proceeding to be one in Admiralty. Admiral Porter and A. M. Pennock meant to institute proceedings in prize only. This lot of cotton was sent to Cairo by a mistake of Admiral Porter in supposing it a lawful prize. He reported its seizure to the Secretary of the Navy on the 7th of March, 1863, and on the 28th of March the Secretary instructed him, in answer, that "Prize property must be sent to a prize court for adjudication," but other property was provided for by the act of 12th March. As the court below very justly say in their Opinion, this was an order "to hold this cotton under the Captured and Abandoned Property Act." But Admiral Porter, supposing it lawful prize, understood that he was ordered to send it to a prize court for adjudication, which he proceeded to do at once. Captain Pennock understood the same when he received it at Cairo, for he expressly says in his Information, that it was cotton "sent from the Yazoo river by Admiral Porter as *prize cotton*, to be turned over to the United States marshal." This Information was the foundation of the whole proceeding at Springfield. But the District Attorney doubting that it was "prize property" instead of directing it to be held under the Captured and Abandoned Property Act, undertook to depart from the Information, and frame his Libel upon an assumption or invention of facts.

With the Information before him, he sets out in the introductory clause of his Libel that the cotton was seized by A. M. Pennock, by an order of Admiral Porter on the Mississippi river, which he saw fit to designate as "a public water of the United States, navigable to the sea by vessels of ten or more tons burden;" which was meant evidently to support his subsequent statement in the Libel that the cotton was "within the Admiralty jurisdiction of the court." He meant the proceeding to be in Admiralty. But he deemed it safer to allege some *delict* attaching to the property itself, first in the body of the Libel, and second by an amendment made the same day it was filed. The court below in the Opinion give these two allegations to be in substance, "first, that the seizure had been made for a violation of the non-intercourse act; and second, that it had been made because the owner was in armed rebellion against the United States." The District Attorney, afterwards, obtained the leave of the court to "*amend his Libel in this cause by striking out the first allegation;*" which amendment was proper and just, because Admiral Porter had reported the cotton to have been seized for naval purposes, or as the court below expresses it, "for naval defense."

The only *delict*, therefore, that could attach to the cotton under the Libel as amended, was that contained in the second allegation, to wit: that it belonged to a person "in armed rebellion against the United States." But the theory of the cause, being still an Admiralty proceeding, was continued to be adhered to; for an inspection of the Springfield record shows, that whenever the cause was called up for any order, decree or other proceeding whatever from beginning to end, it is expressly stated on the record to be in Admiralty. The final decree of one-half to the informer was based upon the same theory of a prize proceeding; and afterwards Admiral Porter and the Court in the District of Columbia treated it in the same way.

II.

It is entirely clear that the proceeding cannot be sustained as prize, because the Libel sets forth on its face that the capture was not on the high seas. It is, therefore, sought to sustain it as a proceeding in confiscation, under the act of July 17, 1862. But, in point of fact, this cotton was the property of a loyal person, who

at all times had borne true faith and allegiance to the United States. This fact of loyalty is set forth on oath in the Petition in the case, and the Attorney General expressly declined to traverse this fact, and struck from the usual form of traverse the clause denying the loyalty of the Claimant. This fact upsets the very foundation of any proceeding under the act of July 17, 1862. But it may be said the claimant will not be heard to show it now, because he was not at Springfield to show it in answer to the Libel. Thus, then, he is to be denied the right nnd privilege which Congress passed the act of March 12, 1863, expressly to secure to him; and in this, the most essential of all particulars, that act is repugnant to the act of July 17, 1862. The act of 1862 made the President the primary judge of loyalty; which, in effect, was to make him the final judge in all cases affecting persons "in the enemy's country;" because such persons were prevented by physical obstructions from appearing at the trial, even if actually served with notice; and it was unlawful for any one to serve such notice on them or to communicate it to them in any way. The power thus given to the President was a very delicate one, and, unless exercised with great caution and prudence, might work extreme hardship and injustice upon the loyal men who resided in the "enemy's country." If however, the President should make a mistake in seizing property in *the loyal States*, of persons residing therein and supposed to be disloyal, such persons might be reached by the monition of the Court, and it was lawful for any one to give them information of the proceeding; and it was possible for them to appear and be heard. It was known that many loyal men, friends of the government, were in the disloyal States. The manifest hardship and injustice of this particular feature of the act of 1862 as to them was otherwise than an encouragement to loyalty in the "enemy's country," and was impolitic as well as unjust. For this reason, the act of March 12, 1863, was passed. Whilst the act of July 17, 1862, had mingled friend and enemy indiscriminately in the impossibility of being heard in their defence, the beneficent act of March 12, 1863, postponed the adjudication to a period when both could be heard before an impartial tribunal and from the day of its passage communicated to the property of the loyal citizen a sacred immunity from confiscation. This act was confined in its application to property in the enemy's country—and to certain desig-

nated kinds of property. Its leading feature was to prevent such property being seized by the President on his judgment in each particular case as to the loyalty of the owners, and to prevent a subsequent judgment which was certain to be by default, being set as a perpetual bar to correcting any mistake the President might make against friends of the government in the disloyal States. It provided a different mode of seizure for such property and kept it free from the conclusiveness of a judicial condemnation by having it sold and the proceeds placed in the Treasury without such condemnation; and finally, to give full relief to friends without impairing belligerent rights as to enemies, it gave to such friends a day in court at any time within two years after the close of the war. As most persons in the disloyal States were actual enemies, this act assumed them all to be so constructively, and it did not, therefore, require the preliminary judgment of the President, or of any other person, before seizure; but substituted Military seizure for Executive, and summary sales by agents appointed for the purpose for the slow and useless process of judicial sales to be made after the farce of a pretended hearing had under circumstances which made it impossible for those in interest ever to be actually heard.

This act did not repeal the act of July 17, 1862, *in toto;* for, there were many important provisions in the latter act which the act of March 12, 1863, does not affect. But as to the particular kinds of property named in the act of 1863, which might be seized in the enemy's country, it was a repeal in effect; and there is every reason to believe it was so intended, as it ought to have been. It has been intimated already, that in a most essential feature of justice and policy, viz: postponing the determination of loyalty until after the war, the two acts are repugnant. But it does not require actual repugnancy to sustain a constructive repeal. When it is plain that one act was meant as a substitute for another, though not directly repugnant, it is a repeal of the former act. The act of March 12, 1863, was a substitute for the 5th, 6th and 7th sections of the act of July 17, 1862, or so much thereof as related to property seized in the disloyal States, and of the particular kinds designated in the repealing act. It was a repeal *pro tanto.* As to such property there was no longer any necessity or reason for proceeding under the act of 1862; nothing to be gained for the government, a burdensome and useless duty left on the President and

the Courts, and constant danger of wrong to a class of most meritorious and useful friends of the government, whose good will and encouragement to continue loyal, involved most high and important considerations of policy.

III.

But the proceedings at Springfield cannot be sustained under the act of July 17, 1862, even if the act were in force at the time. Neither the libel nor any other part of the proceeding either *avers* or *shows* any preliminary executive seizure of the cotton in question, as required by the act. Indeed, the contrary is both *averred* and shown upon the face of the record. The record upon its face not only fails to show that the court had jurisdiction under the act, but it shows the Court *had not jurisdiction*. The requirement of a preliminary executive seizure as a prerequisite foundation for the judicial seizure by which alone the Court can acquire jurisdiction in a proceeding *in rem*, has been so fully and so recently discussed in the confiscation cases and in others that it is unnecessary to cite over again the authorities or re-state the reasoning on the subject. It is suggested that the letter of the Secretary of the Navy of March 28, 1863, ordering Admiral Porter to hold the cotton in question, subject to the act of March 12, could not have reached him in time to affect his action in the premises. This is a mistake. It is certain the cotton did not reach Cairo before the 7th of April. It therefore did not leave the Yazoo earlier than the 5th of April which gave seven days for the letter to reach Admiral Porter.

He had held this cotton for nearly a month, after reporting it to the Secretary, awaiting instructions as to its disposition. As soon as he received the instructions he executed them with military promptness, *as he understood them*, that is, to send forward this cotton, which he considered "prize property," to a "prize court for adjudication."

IV.

If the act of July 17, 1862, might still be invoked in cases where the President should see fit to seize primarily property embraced in the act of March 12, 1863, it is certain that in all cases of military *capture*, in the disloyal States, the act of March 12, 1863, superceded that of July 17, 1862, as soon as the military capture occurred.

V.

It is, therefore, to be taken that the cotton in controversy in this case was subject te the act of March 12, 1863, only, and the procaeding at Springfield null and void, and without any judicial authority whatever. It is hardly necessary to call attention to some minor facts, that appear on the record of these proceedings, such as: 1st. That the marshal returned on the monition, that he had attached the property on the *very same day* the Libel was filed and the monition issued. But it appears the property was at Cairo, more than two hundred miles distant from the Court. So that it was physically impossible for his return to have been true. 2d. He did not give notice as ordered in the monition. He did not "post up" notice as commanded, but contented himself with the publication in a newspaper only, which was but a part of the notice required by the order of the Court and the monition.

VI.

The Marshal and other parties at Springfield, took unlawful possession of this property, by the permission and connivance of A. M. Pennock, who had the custody of it, under executive instructions to hold it under the act of March 12, 1863, and to transfer it to the proper Treasury agent to be sold under that act. The property belonged to the United States absolutely, if it had been owned by disloyal persons; and in trust if such owners were loyal, and would come forward in the Court of Claims and ask restitution within two years after the end of the war. These unauthorized parties proceeded to make sale of the property, and they placed the proceeds in the hands of the Assistant Treasurer of the United States at St. Louis, and informed him of the fact, that it was the proceeds of United States property, which they had unlawfully taken into their possession and sold; for the Assistant Treasurer had notice of the proceeding at Springfield. It was then his duty, *to hold this money for the United States*, and to pay it to no one but his superior officer, the United States Treasurer at Washington. The money being in the hands of the Assistant Treasurer at St. Louis was in the Treasury under the act of March 12, as contemplated by that act. Afterwards the same unauthorized persons gave to A. M. Pennock, who had connived at the unlawful conversion of this government property, an order on the Assistant Treasurer at St Louis, requesting him to pay to Pennock one half

of this public money, as a reward for having surrendered the property to them. Pennock did not present this order for payment, but endorsed it over to Admiral Porter—Porter did not present it for payment, but deposited it with the Secretary of the Navy. The Secretary of the Navy did not present it for payment, but ordered Porter to send it back to the Assistant Treasurer at St. Louis and leave it on deposit with him; which he did. The money represented by this order, *did not belong* to Admiral Porter, as it was argued in the court below. He had even parted with the order itself, under the instructions of his superior officer, whose instructions he had desobeyed by sending the cotton forward as prize property. On receipt of the order by the Assistant Treasurer at St. Louis, it would have been proper for him to have cancelled it. But whether cancelled or not, it was a nullity; and the Assistant Treasurer never paid out the money, at all, except to the Treasury officials at Washington.

Admiral Porter ought to have rested the matter here, and to have pursued no further his determination, to make this prize property. But instead of this he proceeded to draw in favor of the Assistant Treasurer at Washington, his own order on the Asst. Treasurer at St. Louis for the half covered by the Pennock order. Upon this order of Admiral Porter, the Assistant Treasurer at St. Louis, paid the amount over to the Assistant Treasurer at Washington. The amount all the while remained in the hands of the proper officials, and had not been paid, up to this time, to any stranger, nor in recognition of the unlawful conversion and attempted appropriation of the property by the parties at Springfield. The Assistant Treasurer at Washington was fully notified of the unlawful transaction at Springfield, and must be presumed to have known that by law this money belonged to the United States. He paid it over to the United States Treasurer, and it was covered into the Treasury; never having at any time reached any unofficial hands, after it was first deposited at St. Louis.

VII.

Under the act of March 12, 1863, it is sufficient if the proceeds reached the Treasury. If the Treasury received it with any unlawful conditions attached, the claimant is not to be prejudiced by such unlawful conditions, over which he had no power and with which he had no connection, save that of confiding his property to

United States officials under the guarantee of a solemn law enacted to cover and protect his rights. The fact that the Treasurer of the United States afterwards respected these unlawful conditions and *without the authority of law*, took the money from the Treasury, after it had been covered in, and turned it over to persons not entitled to receive it, does not affect the rights of the claimant under the act of March 12, 1863. This doctrine has been uniformly acted upon in the Court of Claims. See Cook *vs.* United States, (9 C. C.,) which was acquiesced in by the Attorney General and no appeal taken.

VIII.

But it is said, the District Court in the District of Columbia intervened in this matter and made decrees in relation to this money. It will hardly be contended that this Court had any jurisdiction or authority whatever for its action. Their proceeding professed to be *in rem*. But the *res* was *in St. Louis*, and still within the jurisdiction of the Court at Springfield if it ever had been within such jurisdiction, *and not within the jurisdiction of the Court of the District of Columbia;* and therefore it could not be attached and brought under the control of the Court, so as to confer jurisdiction. The Assistant Treasurer at St. Louis was not bound to obey any order of the Court of the District of Columbia, in relation to this money belonging to the United States. The fact that he did so does not give any validity to the *previous* proceedings of the Court. No proceeding of any character was taken by the Court, after the money reached the District of Columbia. The order of Admiral Porter on the Assistant Treasurer at St. Louis, to pay out money belonging to the United States was nothing. He had no right to give such an order. The money was neither his nor subject to his lawful control. The Court at Washington had no *res* before it and the whole proceeding was a farce; except that it *gave notice on its face* to the U. S. Treasurer of the unlawful proceeding at Springfield, and should have put him on his guard to prevent the government being damaged by the misappropriation of a public fund.

The Court below was correct in the judgment rendered and the plaintiff was entitled in law and justice to recover $25,106.80.

JOS. S. FOWLER, *Atty.*

JOHN POOL, *of Counsel.*

IN THE

Supreme Court of the United States.

No. 1098.

UNITED STATES, APPELLANTS,

vs.

JOSIAH WINCHESTER, EXECUTOR.

SUPPLEMENTAL ARGUMENT FOR THE DEFENDANT, IN APPEAL.

The argument of the Attorney General makes the point, in this Court, that the proceeding at Springfield may be sustained under the Act of July 13th, 1861, by virtue of the allegation in the libel that the cotton was seized under that act. This allegation was stricken from the record by the District Attorney, as soon as all the cotton of this lot of 258 bales to which it could apply had been released. There was an express provision in the act of 1861 for the release of property seized under it. There was no such provision in the Act of July 17, 1862. The amendment striking out was intended to apply, as in terms it does apply, to this allegation. To apply the amendment to the *introductory recitation* in the Libel is inadmissable.

It was *necessary* that the Libel should allege some *delict* attaching to the property itself, in order to warrant the proceeding. As originally filed, only *one delict* was alleged. But, by leave of the Court, on the same day, a *second delict* was alleged, viz: under the Act of July 17, 1862. Upon leave of the Court, the first allegation was afterwards

stricken from the record. A question is now raised as to what was the *first allegation*.

The Information of Pennock is a part of the Springfield record. That Information expressly stated, that the cotton was "*seized as being the property of rebels.*" The first allegation, that it was seized for violating the non-intercourse Act of July 13, 1861, was, therefore, entirely gratuitous on the part of the District Attorney. It made the record contradictory; for, the allegation in the Information could not stand with this gratuitous allegation in the Libel. It was, for this reason, that the Dist. Attorney obtained the leave of the Court, to add the second allegation in conformity with the Information. In order to make the record consistent, he afterwards obtained leave to strike out the first allegation, which was contradictory to the Information and wholly unsupported by the facts.

In Courts of limited jurisdiction, it must appear on the face of the record itself, either by direct averment, or otherwise, that those facts exist which bring the cause within jurisdictional limits. In Courts of limited jurisdiction, there is no presumption in favor of the jurisdiction. (Ex parte Smith, 94 U. S. R., page 455.) It is true, when jurisdiction is shown on the face of the record, presumptions in favor of *regularity* in subsequent proceedings may be indulged; but still, within certain bounds. The question here is one of jurisdiction only, which must exist, if at all, by virtue of what appears on the face of the record itself.

II.

But, if the first allegation had remained a part of the Libel, it would have been competent, nevertheless, to have shown by evidence, *aliunde*, in the Court of Claims, *that it was false.* The Court permitted this to be done, and found the fact, that the cotton was not seized for violation of the non-intercourse act of July 13, 1861, but was seized *on the plantation of the owner*, for naval purposes, and a receipt

given for it. No one now denies, that this first allegation was false. Yet, a technicality is invoked to set aside the effect of the admitted truth, and to uphold an admitted jurisdictional falsehood in the record of a judgment rendered by default.

The Attorney General admits that he cannot do this, if the Springfield judgment is a *foreign* one as to the Court of Claims. But he contends that nothing *aliunde* can be heard against a *domestic* judgment by default, no matter what imposition and falsehood may have been practised upon the absent party, and on the Court, itself, in making up the record.

It is somewhat difficult to know what is meant by a domestic judgment, under this distinction. The District Court of Illinois is territorily confined. The Court of Claims is not a Court of territorial jurisdiction, at all. It is not open to litigation between citizens, and is concerned with no questions of *venue*, nor of residence. It issues no process and enforces no judgments. If there be any difference between domestic and foreign judgments, as to the mode of avoiding a falsehood of record, it is only this: The domestic Court itself may annul the record, *to make it*, speak the truth, on direct application of parties and proof adduced *aliunde*. But, other Courts, having no power so to amend, may arrive at the truth, by proof *aliunde*, and *give it effect*, whenever it involves *jurisdiction*. Therefore, whenever what purports to be a judicial record of a Court of limited jurisdiction is brought before another Court, which has no power to make it speak the truth by amendment, it is open to the inquiry whether it is *really a judicial record;* and that depends on whether the Court which undertook to render it *had jurisdiction*. For, if such Court had not jurisdiction, it is not a record. It has been aptly said, that it is reasoning in a circle, to say; "this *is a record* because the Court had jurisdiction, and the Court had jurisdiction because *this record* says so."

Wherever there is a rule making judgments import absolute verity, it is by *local law*, and, as such, is confined to that state or country. (Thompson vs. Whitman, 18 Wal., 457.) There is no such rule in the Federal Courts of the United States. For the Federal Courts, a different rule is laid down in Williamson vs. Berry, (8 Howard, 540,) in these words: "The jurisdiction of *any Court* exercising authority over a subject, may be enquired into in *every other Court*, when the proceedings in the former are relied upon and brought before the latter." And, indeed, it is difficult to see how a different rule could obtain anywhere, as to Courts of limited and defined jurisdiction.

III.

The General Order of the Secretary of the Navy of Aug. 28, 1862, was no more an order to seize for confiscation, than for naval purposes; and this cotton was seized for "naval defence." It is, indeed, not an order to *seize* at all; it is an order *not to seize*, except for certain purposes, and *to report* every seizure, "*with all the attendant circumstances*," viz: whether for naval purposes, (which might be from friend and foe alike,) "or for confiscation under the act of Congress," (which could be only from certain individual enemies specified in the act.) But the act of Congress required a special executive order before seizure, which would have to be reported "*as attendant circumstances*" under the requirements of the order of August 28, 1862.

On the 31st of March, 1863, the Secretary of the Navy issued another General Order, which is given in the findings of the Court of Claims. The second section of this order is in these words: "It is further ordered, that every officer, sailor or marine in the naval service of the United States, who shall receive or have under his control any property which shall have been abandoned by the owner or owners, *or captured in any district declared to be in insurrection against the United States, including all property seized*

in any such district under naval orders, excepting only such as shall be required for the use of the naval forces of the United States, and as is *excluded* by the act of March 12, 1863, shall promptly turn over all such property to the agent appointed by the Secretary of the Treasury to receive the same, who shall give receipts therefor, if desired."

The filing of the Libel, by the District Attorney is argued by the Atty. General to be, in effect, an executive seizure under the general instructions to District Attorneys. But the Act of July 17, 1862, is explicit, that such proceeding was unauthorised unless *preceded* by an executive seizure.

IV.

To make a judgment *by default* binding, there must be strict compliance with all preliminary requirements. In this proceeding at Springfield, the Marshal gave the notice in only *one* of the *two* modes required by the monition and order of the Court. There could be no valid judgment by default upon such defective notice. The failure to give notice as required, rendered the judgment of condemnation void.

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